

Apdn no. 161(v)
CERTIFIED COPY for the purpose of Personal record.

Date on which copy applied for 25/5/2021
Date on which application completed 25/5/2021
Date given for taking delivery 27/5/2021
Date on which copy was ready 25/5/2021
Date on which copy delivered 25/5/2021
Copying and comparing fees etc. 3689/-
Paid in the Nazir Section under receipt No. 43328 dated 25/5/2021



Dingulda
25/05/2021
Superintendent

CR No. GANGO10003542014



Presented on: 24.02.2014
Registered on: 24.02.2014
Decided on: 21.05.2021
Duration: Years Months Days
7 2 25

IN THE COURT OF DISTRICT & SESSIONS AT PANAJI.

(Before Smt. Kshama M. Joshi, Adl. Sessions Judge,
Panaji)

Sessions Case (Crs) No. 13/2014

STATE

(Through CID CO North Goa) ... Complainant

V/s.

Shri Tarunjit Tejpal,
s/o Indrajit Tejpal,
r/o 12 Link Road,

SC 1000100014

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Jangpura Extension,
New Delhi - 14

..... Accused

Spl. P.P. Shri F. Tavora present for the State at the time of arguments and filing of written arguments along with A.P.P. Ms. Cyndiana Silva assisting Spl. P.P.

Advocate Shri R. Gomes present for the accused at the time of arguments and filing of written arguments.

J U D G M E N T

(Delivered on this the 21st day of the month of May of the year 2021).

The above named accused has been put up for trial by CID CB, North Goa, for the offences punishable under sections 376(2)(f), 376(2)(k), 354, 354 A, 354 B, 341 and 342 of the Indian Penal Code (IPC, for short).



2. Case of the prosecution, in brief, is as follows:-
On 21.11.2013 on various social sites news channels of electronic media, news was published stating that during the THINK Fest organised in Goa between 7th to 11th November 2013 by Tehelka.com, Tarun Tejpal, Editor-in-chief of Tehelka Magazine, outraged the modesty of

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sexually assaulted a female journalist of Tehelka and after seeing the said news it was felt proper by the police department to initiate a preliminary inquiry in the matter since the alleged incident was stated to have taken place in a hotel in Goa and in this respect it was reported that the female victim had sent a detailed mail narrating the entire incident to Ms. Shoma Chaudhary, Managing Editor of Tehelka. Hence, an email was sent to Ms. Shoma Chaudhary, on her email address shoma@tehelka.com requesting her to immediately forward the said complaint and other relevant information in this regard to Crime branch of Goa Police for further action. Taking into consideration the reports of various electronic, social and print media and other inquiries conducted and information received from source, it prima facie appeared that a cognizable offence has been committed by Mr. Tarun Tejpal, Editor-in-Chief of Tehelka.com during THINK Fest held at hotel Grand Hyatt, Bambolim Goa, between 7.11.2013 to 11.11.2013 wherein the accused has allegedly committed the offence of wrongful restraint/confinement, sexual harassment and rape on a

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female journalist of Tehelka and hence the complaint was lodged by Smt. Sunita Sawant, P.I., CID Crime Branch, Dona Paula. Thorough investigation was carried out which culminated into the chargesheet and supplementary charge sheets being filed against the accused.

3. The allegations against the accused, In short, are that on the night of 7/11/2013, under the pretext of waking up the American actor Robert de Niro, the accused took the prosecutrix into left guest lift of Block 7 (Guest House No. 7) of Grand Hyatt Hotel, Bambolim, and by using force and against her wish, wrongfully restrained and confined her in the said lift and molested, sexually harassed and raped her during that time by kissing her and lifting her dress, pulling down her underwear and inserting his tongue and fingers into her vagina. Further allegations against the accused are that on 8/11/2013, he took the prosecutrix in the right guest lift of Block 7 (Guest House No. 7) of said Grand Hyatt Hotel and wrongfully restrained her and molested her by kissing her, lifting her dress and grabbing her buttocks.

4. Accordingly, charge was framed, by my
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predecessor, for the offences punishable under sections 354, 354 A, 354 B, 376(2)(f), 376(2)(k), 341 and 342. The same was explained to the accused who pleaded not guilty to the same.

5. The prosecution, with a view to connect the accused with the crime, has examined in all 71 witnesses. Statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. Case of the accused is of denial simpliciter with respect to all the allegations of wrongful restraint/sexual assault made by the prosecutrix. The accused claimed that no such incidents have taken place and that there was a drunken banter between him and the prosecutrix. The accused, in his defence, has examined four witnesses.

6. Written arguments have been filed by both the parties and brief oral arguments and further clarifications were advanced by Ld. Spl. P.P. Shri F. N. Tavora on behalf of the State and Ld. Advocate Shri R. Gomes for the accused. I have perused the charge sheet/supplementary charge sheets filed, the evidence led by prosecution and the documents produced on record and also the defence

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evidence lead by the accused and the explanation given by the accused in his statement under Section 313 of CR.P.C. and also considered the written and oral arguments filed/advanced by the parties.

7. The points which arise for my determination alongwith my findings thereon are as under:

No.	Points	Findings
(a)	Whether the prosecution proves that the accused has committed rape on the prosecutrix as defined in sections 375(b) and (d) of IPC?	Negative
(b)	Whether the prosecution proves that the accused used criminal force to the prosecutrix with the intention of outraging her modesty or knowing it to be likely that he will thereby outrage her modesty?	Negative
(c)	Whether the prosecution proves that the accused committed physical contact and advances involving unwelcome and explicit sexual overtures thereby causing sexual harassment to the prosecutrix?	Negative
(d)	Whether the prosecution proves that the accused used criminal force to the prosecutrix with the intention of disrobing her?	Negative
(e)	Whether the prosecution proves that the accused was a person in a	Affirmative



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	position of trust or authority and in a position of control or dominance over the prosecutrix?	
(f)	Whether the prosecution proves that the prosecutrix was wrongfully restrained by the accused from going out of the lift and was wrongfully confined by the accused in the said lift?	Negative

REASONS

8. Section 375(b) and (d) of IPC, Inter alia, read as under: A man is said to commit rape if he (b) inserts to any extent, any object or a part of the body, not being the penis, into the vagina....(d) applies his mouth to the vagina.....Firstly against her will; Secondly without her consent. Explanation 1 to Section 375 of IPC states that 'Vagina' shall also include 'Labia majora'. Explanation 2 to Section 375 of IPC states that consent means an equivocal voluntary agreement when the woman by words, gestures and any form of verbal or non verbal communication communicates willingness to participate in the specific sexual act. Proviso to Section 375 of IPC states that a woman who does not physically resist the act of penetration shall not by reason only of that fact, is



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regarded as consenting to the sexual activity. Section 376 (2) (f) and (k) of IPC, inter alia, provide that whoever... (f) by being a relativeor by the person in a position of trust or authority towards the woman commits rape on such woman.....(k) being in a position of control or dominance over a woman commits rape on such woman Section 341 of IPC provides punishment for wrongful restraint and Section 342 of IPC provides punishment for wrongful confinement. Section 354 of IPC pertains to assault or use of criminal force by any person to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty. Section 354A of IPC, inter alia, provides that a man committing physical contact and advances involving unwelcome and explicit sexual overtures or making sexually coloured remarks shall be guilty of sexual harassment. Lastly, Section 354B of IPC, inter alia, provides punishment for assault or use of criminal force by any man to any woman with the intention of disrobing her or compelling her to be naked.



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9. The burden is, no doubt, on the prosecution to prove beyond reasonable doubt the offences alleged to have been committed by the accused and the onus does not shift.

10. The Spl. P.P. contended that reliance can be placed on the sole testimony of victim of rape, if the same inspires confidence, if it is reliable, if it is of 'sterling witness, etc. The Spl. P.P. pointed out from the citations as to how the Court can decide that the sole witness is reliable. The Spl. P.P. urged that the evidence regarding the alleged loose character of the prosecutrix is not relevant. The Spl. P. P. further submitted that this Court ought to deal with the present case with utmost sensitivity and should not give value to minor contradictions or discrepancies in the statement of the prosecutrix. Spl. P.P. submitted that the evidence of general immoral character or previous sexual experience, if any, of the prosecutrix is not relevant in view of Section 53-A, proviso to Section 146 and omission of clause (4) of Section 155 of the Indian Evidence Act. He pointed out that from time to time the prosecution had



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objected to the line of cross-examination adopted by the Counsel for the accused during cross examination of PW1/prosecutrix. It would be pertinent to make reference to several judicial pronouncements having a bearing on the issue of testimony of the victim in a rape trial and its probative value. Spl. P.P. has placed reliance upon the following observations of the Apex Court in the following cases:-

(i).- "State of Punjab vs Gurmit Singh and Ors." reported in [(1996) 2 SCC 384]. In this case, it has been observed thus:

"the testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulties in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or

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suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice



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to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable..... Even in case, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of 'loose moral character' is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavior earlier she has a right to refuse to submit herself sexual intercourse to anyone and every one because she is not a vulnerable object or prey



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for being sexually assaulted by anyone and everyone. No stigma like the one in the present case should be cast against such a witness by Courts for after all it is the accused and not the victim of sex crime who is on trial in the Court.....

"Of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres we show little or no concern for her honor. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. A rapist not only violates the victim's privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female. The courts therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The court should examine the broader

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probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix which are not of a fatal nature to throw out and otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.....

The provisions of the Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the detail of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on

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record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime is being cross examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the defence to test the veracity of the prosecutrix and the credibility of her version through cross examination, the Court must also ensure that cross examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape it must be remembered has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she has been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as 'discrepancies and contradictions' in her evidence." In the case of Sri Bodhisattwa Gautam vs Ms. Subhra

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Chakraborty reported in AIR 1996 SC 922 it has been observed by the Hon'ble Apex Court at para 15 that despite decision of the Court that corroboration of the prosecutrix was not necessary, cases continue to end in acquittal on account of mishandling of the crime by the police and the invocation of the theory of 'consent' by the Courts who tried the offence and at para 16 of the judgment it has been observed that despite the introduction of Section 114 A of the Evidence Act, the situation has hardly improved. It is further observed that conviction rates for rape are still lower than any other major crime and women continue to argue that in rape cases the victimized women rather than the rapists were put on trial. It is next observed in the same para by the Hon'ble Apex Court that large number of women still fail to report cases to the police because they fear embarrassing and insensitive treatment by the doctors, the law enforcement personnel and/or the cross examining defence attorneys. It is next observed that the fear has to be allayed from the minds of women so that if and when this crime is committed the victim may



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promptly report the matter to the police and on a charge sheet being submitted the trial may proceed speedily without causing any embarrassment to the prosecutrix who may come to the witness box without fear psychosis."

(ii).- "*Ganesan vs State, Rep. By Its Inspector Of..*"(2020) 10 SCC 573. In this case, the Hon'ble Supreme Court, after reviewing several judicial pronouncements in matters relating to crimes against women, has referred to its previous judgment rendered in the case of "*Rai Sandeep alias Deepu vs State (NCT of Delhi)*", (2012) 8 SCC 21 on the quality of a 'sterling witness'. The observation is as follows:-

"22, *In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by*

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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 be no prevarication in the version of such witness. The witness should be in the position to withstand cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt of the factum of the occurrence, the persons involved and as well as the sequence of it. Such a version should have a correlation with each and everyone with other supporting material such as the recoveries made, weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him.

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Only if the version of such a witness qualifies the above test as well as all other 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 materials for holding the offender guilty for the charge alleged."

(iii).- *"State of Himachal Pradesh vs Manga Singh" [(2019) 16 SCC 759]. In this case, inter alia, the Apex Court has held that conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. It has been further held that conviction can be based on the solitary evidence of the prosecutrix and no corroboration is required unless there are compelling reasons which necessitates the Courts to insist the*

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corroboration of her statement. It has been further held that minor contradictions or small discrepancies should not be a ground for discarding the evidence of the prosecutrix. It is also held that corroboration is not a *sine qua non* for a conviction in a rape case and that if the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence, conviction can be based on the uncorroborated sole testimony of the prosecutrix.....

The Apex Court in the case of "Manga Singh" (supra) has further held thus:-

"Observing that there are a number of unmerited acquittals in rape cases and that the Courts have to display a greater sense of responsibility and to be more sensitive while dealing with the charges of sexual assault on women, In State of Rajasthan vs N.K. The Accused - (2000) 5 SCC 30, this Court has held as under.

"...A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for finding in favour of acquittal. An unmerited acquittal encourages wolves in the society

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being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. In *Bharwada Bhoginbhai Hirjibhai vs State of Gujarat*, 1983) 3 SCC 217, this Court observed that refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion."

(iv). *State (Govt. Of NCT of Delhi) vs Pankaj Chaudhary and Ors*, (2019) 11 SCC 575.

"Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference like the victim being a woman of 'loose moral character' is permissible to be drawn from



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that circumstance alone. A woman of easy virtue also could not be raped by a person for that reason.....

It is a well settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. Vishnu alias Undya V. State of Maharashtra, (2006) 1 SCC 283. It is well settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and that corroboration is not sine qua non in a conviction for a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming."



(v). - "Narender Kumar vs State (N.C.T. Of Delhi)", (2012) 7 SCC 171. In this case, it has been reiterated that it is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is

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accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration will be required unless there are compelling reasons which necessitate the Court for corroboration of her statement. It has been further observed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. It has been further observed that the testimony of the prosecutrix should be viewed with a higher degree of probability as compared to testimony of other witnesses since the subject matter is a criminal charge. It is further observed that it is only when the Court finds it difficult to accept the version of the prosecutrix on its face value, then it may search for evidence, direct or circumstantial which may lend assurance to her testimony. It has also been observed that when the evidence of the prosecutrix is found to be suffering from serious infirmities and inconsistencies with other material, the prosecutrix is found making deliberate improvement on material point with a view to rule out consent on her part and when there is no injury on her



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person even though her version was otherwise, no reliance can be placed on her evidence.

In the case of "Narender Kumar" (supra), it has been reiterated that even when there is material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of 'easy virtues' or a woman of 'loose moral character' can be drawn. It is further observed that even a woman of 'loose character' has a right to refuse to submit herself to sexual intercourse to anyone and everyone and it has also been held that just because a woman is of 'easy virtue' her evidence cannot be discarded on that ground alone and rather it should be cautiously appreciated.

In this case of "Narender Kumar" (supra), it has been further observed as follows: - in view of the provisions of Section 53 and 54 of the Indian Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all.

11. It is further held that in the case of rape the

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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 no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on record he cannot be convicted of an offence. Though there is initial presumption of the innocence of the accused the prosecution has to bring home the offence by reliable evidence otherwise the accused is entitled to the benefit of every reasonable doubt.

(vi).- "*Visveswaran vs State Rep. By S.D.M.*" (AIR 2003 SC 2471).

"The approach required to be adopted by Courts in rape cases has to be different. The cases are required to

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be dealt with utmost sensitivity. Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the Courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation the only requirement is of extra caution by Courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved."



(vii). - *"State of Himachal Pradesh vs Mango Ram", [(2000) 7 SCC 224]. In this case, it has been observed that the absence of marks of violence on the body of the prosecutrix and on the body of the accused was not of*

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much significance and that consent for the purposes of Section 375 IPC requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. It has been further observed that whether there was consent or not, is to be ascertained only on the careful study of all relevant circumstances. It is next observed when there is clear evidence that the victim had resisted the onslaught and had made all possible efforts to prevent the accused from committing rape on her, it could not be said that the prosecutrix had given consent.

12. On the other hand, the Advocate for the accused has also relied upon various Judgments of Higher Courts laying down the settled principals of law relating to appreciation of evidence of solitary rape victim. They are:-

(i). In the case of "Suraj Mal v/s. State (Delhi Administration)" reported In AIR 1979 SC 1408, the Apex Court has observed as follows:

"It is well settled that where witnesses make two inconsistent statements in their evidence either at one

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stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses".

(ii). In "Vimal Suresh Kamble vs Chauverapinake Apal S.P. and anr.", reported in AIR 2003 SC 818, the Hon'ble Supreme Court held as under:-

"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."

(iii) - In "Navnath Namdeo Maske v/s State Of Maharashtra", reported in 2004 AllMR(Cri) 2955 the Hon'ble High Court Of Bombay has observed:-

"[16] It will be clear at this stage that shobha has completely and totally changed her version in the

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supplementary statement. In the fir she makes the allegations of rape only against accused Navnath. In the supplementary statement she brings into picture accused Nos. 1 and 3 and alleges that they had committed rape. In the supplementary statement (Exhibit 49) in last para she had tried to explain that when she lodged the FIR she was not in a proper state of mind and had lost control over her mind, and therefore, she had not named Keraba as a person who committed rape first in order of sequence. When, therefore, the prosecutrix changes her version completely and totally within few hours of lodging the FIR and tries to implicate accused nos. 1 and 3, then this become a strong circumstance creates serious doubt of her character and integrity as a witness in the court.

[17] The submission of learned APP that Shobha was not in a proper state of mind when she lodged the FIR and, therefore, these lapses have occurred, and cannot at all be accepted. It is not that immediately after the rape Shobha had gone to lodge the report. The rape was committed between 2.30 p. m. and 3.30 p. m.; she went by bus to her home; waited for her father at home; who



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accordingly came at 12 midnight; then she narrated the incident to him; and on the next day both of them had gone to advocate Desai, they consulted and talked with him about the entire incident and took instructions from him; then they went to lodge the report at 3.15 p. m. In the mean time Shobha was examined by the doctor where she gave the case history. This passage of time was sufficient for Shobha to over come mental trauma and to give clear and cogent report of the sexual assault.

[18] Difference in two statements of Shobha, viz. the FIR and the supplementary statement, cannot at all be considered as minor. In the FIR she totally omitted the name of accused No. 3. There is not even remote reference to him, whereas in the supplementary statement she not only brings him into picture but alleges that he was the first to commit rape followed by rape by navnath and thereafter by Dattu. Therefore, this is a total somersault and making the prosecution case topsy-turvy.

[21] Second aspect that creates doubt about the story is that even if the prosecutrix is alleged to have been raped by three persons in succession as per the FIR

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or supplementary statement, there is not even a scratch upon her body nor any abrasion or contusion. There are no signs of rape whatsoever and nowhere is it noted by the doctor who examined her. In her cross examination Para 12 Shobha admitted that she was trying her level best to stand when she was pulled down on the ground by the accused persons; she was resisting to avoid forcible sexual intercourse and also avoiding to see that both the accused should not get any chance to commit rape. She was doing and trying her level best to avoid the rape and she put her resistance for about 10 to 15 minutes. She was also raised hue and cry when she was sexually assaulted by the accused as above.

[22] If what Shobha is stated is admitted as true then there ought to have been some signs of some sexual intercourse with her in the form of any scratch, nail abrasions either on her body or on the body of any accused.....

[29] The learned APP tried to contend that shobha had no reasons to falsely Implicate all these accused. That is also altogether different aspect in the sense that if



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the substantive evidence is not forthcoming, if the evidence of the prosecutrix does not inspire confidence, then only because there is no reason for the prosecutrix to falsely implicate, the conviction of the accused cannot be sustained for all the reasons stated above....."

(iv).- In "*Sadashiv Ramrao Hadbe vs State of Maharashtra and anr.*", reported in (2006) 10 SCC 92, the Hon'ble Supreme Court held as under:-

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



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(v).- In "Rajoo & Ors vs State Of M.P", reported in 2009 AIR(SC) 858, the Hon'ble Supreme Court held as under:-

"9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the prosecutrix 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, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured



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



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far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

(vi).- In "Tameezuddin @ Tammu vs State Of (Nct) Of Delhi," reported In (2009) 15 SCC 566, the Hon'ble Supreme Court held as under:-

"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."

(vii).- In "Krishan Kumar Malik V/S State of Haryana" reported in 2011 CrLJ 4274, the Hon'ble

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Supreme Court Of India (D.B.) held as follows: -

"[31] No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Code of Criminal Procedure), FIR and deposition in Court."

(viii).- In Narender Kumar vs State (N.C.T.Of Delhi), reported in 2012 CrLJ 303, the Hon'ble Supreme Court held as under: -

"16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based



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only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a prosecutrix of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. 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. (Vide: Vimal Suresh Kamble v.



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Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).

17. *Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements 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. (Vide: Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)*

18. *In Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010) 14 SCC 534, this Court while dealing with the issue held:*

'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'

19. *In Rajoo & Ors. v. State of Madhya Pradesh, AIR 2009 SC 858, this Court held that ordinarily the evidence of a prosecutrix should not be suspected and should be*

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believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The court however, further observed: '.....

It cannot be lost sight of that rape causes the greatest distress and humiliation to the prosecutrix 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."

(ix).- In "Raj Sandeep @ Deepu v/s State Of Nct Of Delhi" reported in 2012 CrLJ 4119, the Hon'ble Supreme Court Of India (D.B.) has defined a 'sterling witness': -

[15] In our considered opinion, the sterling witness should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to



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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 strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated



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

[16] In the anvil of the above principles, when we test the version of PW- 4, the prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests mentioned above. There is total variation in her

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version from what was stated in the complaint and what was deposed before the Court at the time of trial. There are material variations as regards the identification of the accused persons, as well as, the manner in which the occurrence took place. The so-called eye witnesses did not support the story of the prosecution. The recoveries failed to tally with the statements made. The FSL report did not co-relate the version alleged and thus the prosecutrix failed to instill the required confidence of the Court in order to confirm the conviction imposed on the appellants."

(x).- In "Kailash vs. the State of Maharashtra (Criminal Appeal No. 52/2016)", reported in MANU/MH/1567/2018, the Hon'ble High Court of Bombay (Nagpur Bench) held as follows: -

"30. It is well settled that in a case of rape like the other criminal cases the onus is always on the prosecution to prove each ingredient of the offence. The prosecution must discharge this burden of proof to bring home the guilt of the accused and this onus never shifts. It is also well settled that the conviction could be based on the sole

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testimony of the prosecutrix, if it is implicitly reliable and there is a ring of truth in it. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not requirement of law but a guidance of prudence under given circumstances. In the instant case, we do not find that the evidence of the prosecutrix inspires confidence. There are material omissions and glaring contradictions in the evidence of the prosecutrix and her mother and brother. Each of them have a different story to tell about the commission of the offence of rape on the prosecutrix on three occasions. The evidence of the prosecutrix in her examination-in-chief and her cross-examination also differs on material particulars. In these set of facts, it would be extremely risky to base the conviction of the accused on the sole testimony of the prosecutrix when it does not inspire confidence."

(xi) - In "Santosh Prasad @ Santosh Kumar vs. State of Bihar", reported in (2020) 3 SCC 443, the Hon'ble Apex Court, whilst appreciating the evidence of a rape prosecutrix, posed to it's the following questions:-
"With the aforesaid decisions in mind, it is required to be





considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?"

12. The above citations relied upon by the prosecution and the accused and the observations made in the said decisions are based on the facts and circumstances of those cases. However, the settled proposition of law referred to in those decisions are that the conviction of the accused in matter of rape or sexual harassment can be based on the sole testimony of the victim if the court finds that the deposition of the victim is of sterling quality which inspires confidence and is absolutely trust worthy and reliable and that the immoral character or previous sexual experience of the victim is not relevant for deciding such cases. Many of the decisions which have been cited by the Spl. P.P. are where the victim is a minor and there is medical evidence in support. In the present case, the prosecutrix (PW1) is not minor and there is no medical evidence. She is well



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educated and journalist by profession and is well conversant with the amendments to IPC after Nirbhaya's case and who has dealt with the issues relating to offences against women including rape and sexual assault/harassment as the prosecutrix had also written articles on the topics relating to violence against women which is evident from her deposition. PW1 states that in her career as a journalist she has written several articles on the issue of violence against women and sexual abuse against women including rape apart from other subjects and have read the text of the offences and the definition of offences against women online. PW1 states that Tehelka may have printed many such articles but she does not recollect if she has read any articles besides her own and states that she has read work written by the accused and admits that the accused has written number of articles and published books.



13. The deposition of PW11, Ishan Tankha, the employee of Tehelka, reveals that he knows that the prosecutrix is extremely capable, intelligent and

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independent person, though he does not know whether the victim has done extensive research on the Rape Laws of India.

14. PW53, the mother of the prosecutrix, has also stated that she would describe the prosecutrix as extremely capable, intelligent, intellectual and independent person and she knows that the beat of the prosecutrix at Tehelka was to write on violence against woman as well as gender issues and to the best of her knowledge the prosecutrix was up to date with the latest laws on rape, sexual harassment which shows that she was conversant with the rape laws as amended.

15. There are many facts which have come on record which create doubt on the truthfulness of the prosecutrix. There is also no medical evidence on record on account of delay in lodgement of F.I.R. and as the prosecutrix had refused to go for medical examination. If the F.I.R. was lodged immediately, then, perhaps, there could have been some swelling in the vagina or presence of saliva of the accused therein, in view of the nature of

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the allegations. PW1 states that the police did not ask her to undergo medical examination and she was not taken to the medical officer during investigation in this case and she does not remember whether the investigating officer wrote a letter dated 26.11.2013 to her requesting her to present herself for medical examination. PW1 further states that she would have co-operated with the investigating officer to undergo medical examination, as a law abiding citizen if such a request was made and if it was necessary to undergo medical examination. PW1 denies the suggestion that she refused to go for medical examination but she admits after showing her the letter that she had made an endorsement on the said letter dated 26.11.2013 made by the Investigating Officer (page no.0146 of volume II of the charge sheet at Exh.451) as follows: - "I submit that I do not need a medical checkup" and she signed the same and put the date below her signature as 26.11.2013. So also the IO, PW70, Sunita Sawant has so stated in her deposition. It is also clear from the deposition of the



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prosecutrix that she had contacted lawyers and Women Commissioner prior to drafting the complaint.

16. PW1 states that she texted a friend and lawyer Rebecca John and told her over a series of messages that she had been sexually assaulted by the accused and she did not want to lose her job for something that was not her fault. The following WhatsApp messages bearing the below number sent by the prosecutrix to her friend, PW15, Harsimran Gill indicate that the prosecutrix was in touch with Adv. Rebecca John even on the 17/11/13 and that Adv. Rebecca John was guiding the prosecutrix about the course of action: -

"97245	11/17/2013 6:27:09 PM	Becky says send it tonight or tomorrow nine am
97247	11/17/2013 6:27:31 PM	I'm choosing tomorrow so everyone can have a drink tonight and prep"

17. PW 13, Mr. M. S. Raghu Amay Kamad, has also admitted that on 16/11/2013, the prosecutrix asked him as to what he was doing in the evening and in the course of their communication on 17/11/2013 the prosecutrix informed him that she would be sending her



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complaint to Shoma and that he asked her who is reading it over, to which she replied that she has a crack team, and asked him whether he would want to read it too. PW13 has further stated that thereafter the prosecutrix invited him over for a drink at her house, after which he bought some alcohol and food at Juhu Circle and went over to her (the prosecutrix's) house. PW13 further stated that on 17/11/2013 when he went to the prosecutrix's house, at approximately at 11.00 p.m., the prosecutrix had some other friends in her house including Harsimran Gill alias Biki, Astha, and possibly others whom he does not recollect. PW13 has also stated they may probably have had alcoholic drinks and food in the prosecutrix's house on that night and that he was at her house till about 04.00 am in the morning, after which he left for his house. PW13, Mr. M. S. Raghu Amay Karnad, claimed that he does not recollect whether he helped the prosecutrix to shape her complaint.



18. The prosecutrix admitted sending the below message to Rohan on 21.11.2013: -

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98215 "The emails, text messages and recorded conversations I have are enough to prove the case. I'm just consulting with a lawyer.

Meanwhile, thanks for your public stand ro.

It means a lot."

19. PW 38, Shamina Shafiq, was a member of the National Commission for Women from the year 2012 to 2015, who sent a letter to the Goa police to take suo motu cognisance of the matter and register an FIR. The records show that PW38 falsely claimed she does not know the prosecutrix personally and that she has not tried to contact her at any time. PW1, the prosecutrix has admitted that she was in contact with Shamina Shafiq after, at least, the 20th of November 2013. That the prosecutrix made a call to Shamina Shafiq is proved from the call record of the prosecutrix produced at Vol.12, rear side of page 2512. However, when the prosecutrix was asked about the same, she evasively stated that she does not recollect why she had made a call to Shamina on 22/11/2013 at 11.56 am. There are also two messages



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from Shamina Shafiq on 22/11/2013, the first message being "this is member, National Commission for Women Shamina Shafiq. I wish to speak to you confidentially" sent at 11:55:11am, and the second message says "Shamina.Shafiq@nic.in" at 1:41:55 pm. Thus, the prosecutrix lied that she does not recollect whether after she received the above messages she was in contact with Shamina Shafiq over phone calls, emails and SMS. From the above evidence which clearly shows that the prosecutrix was in contact with Shamina Shafiq from 20/11/13, and PW38, Shamina having taken suo motu cognisance of the matter, it can be safely concluded that she guided the prosecutrix in the matter.

20. PW59, Persis Sidhva, has stated that she is a member of an NGO by the name of Majlis and that they provide assistance to victims of domestic violence and sexual assault. She has further stated that Majlis is an All Women Association of Advocates and Social Activists with gender perspectives who are dedicated to evolving innovative legal practices to defend women's rights and that Majlis also has a legal team to give legal assistance



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to victims of sexual assault. Ms. Sidhva has further stated that she has been a practicing lawyer for the last 10 years and though she was not the legal head of Majlis at the time of recording of the statement of the prosecutrix, she is so now. Akin to the testimony of PW38 Shamina Shafiq, initially PW59, Sidhva, also claimed that the prosecutrix did not contact her at any time before or after recording her statement and that she has not tried to contact the prosecutrix at any time and she had not giving any legal assistance to the prosecutrix. However, phone record of the prosecutrix reveals that the prosecutrix had phoned PW59, Ms Sidhva on 26/11/2013 at 11.22 pm and 11.26 pm, thereby clearly demonstrating that these claims are outright lies. The record further shows that PW59, Ms Sidhva, sent a message to the prosecutrix on 27/11/2013 at 11.27 am, seen in Vol 12 on the rear side of page 2516 - "was just thinking..In yesterdays statement it isn't clear if the lift was the same in both incidents. You might want to clarify that in the 164 statement today. Also, it should be clear when they draw the spot panchanama". PW59 has also admitted

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sending the message to assist the prosecutrix. The above evidence also shows that PW59, a women's rights lawyer was also assisting and guiding the prosecutrix on how she should be making her statements during the investigation.

21. The call record of the prosecutrix shows that the prosecutrix was also in contact with Advocate Indira Jaisingh, who according to PW45, Suparna Chaudhury is a lawyer and a feminist. PW1, the prosecutrix has stated that Indira Jaisingh was a friend of her stepmother, and her number is saved under the nickname "Brahmastra" (which translates to "most powerful weapon"), and that there was a call exchange between her and Ms. Jaisingh after the prosecutrix's allegations became public.

22. PW70, the IO, Sunita Sawnt also admitted having received a message from the prosecutrix on 24.11.2013 at 6:22:14p.m. that she would inform the location where her statement would be recorded and that it would be the prosecutrix's lawyer's home or chambers.



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23. With the help of experts, there may be a possibility of doctoring of events or adding of incidents. Advocate for the accused has thus rightly submitted that the deposition of the prosecutrix has to be scrutinised in that angle.

24. The incidents according to the prosecutrix have occurred in a lift on 7.11.2013 and 8.11.2013 at Hotel Grand Hyatt. The prosecutrix, after the incidents for the first time after recollecting the facts to her knowledge, had sent an email dated 15.11.2013 alongwith the attachment mentioning the sexual assaults on her to Ishan (PW11) and others. However, the attachments sent alongwith the email has not been produced on record. The attachment sent to PW11, Ishan as per the email sent by PW11, Ishan could not be downloaded by him and he requested to send the attachments again and the attachments were sent with the email dated 16/11/2013 and those attachments are the same according to the prosecutrix which were sent on 15/11/2013.

25. PW1, the prosecutrix, has deposed that she was
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employed in Tehelka, Delhi from 2009 to 2012 and In April 2012 was transferred to Tehelka office in Mumbai for which she has produced her letters of appointment and transfer at Exh.254 to 260 and that her job in Tehelka was given to her by the accused and the accused and her father had worked together in the past for Outlook Magazine and they were also friends and that after her father met with an accident the accused became like a paternal father to her. PW1 also states that the accused was the Editor-in-Chief and owner of Tehelka and his job was to look after the editorial content of the Tehelka magazine and its finances and that the Delhi Tehelka office was spread over three floors of a building and the Managing Editor of the magazine Shoma Chaudhary (PW45) and the editorial staff sat on the same floor although PW45 was allotted a private cabin while the accused sat on the floor above. PW1 has stated that the accused had sent one message, inter alia, stating that for long he treated her like one of his best kids. Many times in her testimony, PW1 has spoken about she having trust in the accused. These facts have not been disputed by

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the accused in 313 Cr.P.C. statement. The accused was declared by the 'Business Week' as one of the fifty leaders at the forefront of change in Asia, as stated by DW3, Shri Rohit Chawla, in his cross-examination. It is therefore proved that the accused was a person in a position of trust or authority towards the prosecutrix and was in a position of control or dominance over the prosecutrix. Point 7(e) gets answered in the affirmative.

26. PW1 has deposed that the THINK Fest had commenced in the year 2011 and in the first year she was part of the organising committee and in such capacity was entrusted with the task such as inviting guests, writing blogs for speakers etc. and it was organised at Hotel Grand Hyatt at Bambolim-Goa. In the subsequent year of 2012 she was incharge of organising interviews, arranging press conferences etc. and during THINK Fest 2013 she was tasked with chaperoning the Hollywood Actor, Robert De Niro who was the Chief Guest at the festival. PW1 has further stated that all the marketing and the hype around the event was focused on the fact that Mr. De Niro would



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be present at the event due to which PW1 felt that this is a high responsibility job with lot of pressure and she was determined to perform it well since she was identified to perform the task by the management. PW1 states that 7.11.2013 was the opening night of THINK Fest 2013 and that she met Mr. Robert De Niro and his daughter Drena De Niro in the lobby of the Grand Hyatt at about 4.00 pm at which time they were accompanied by the accused and his wife Geetan Batra. That after the introductions were made Mr. De Niro and his daughter Drena were accompanied by the victim, the accused, the daughter of the accused Tiya Tejpal and a butler provided by the Hotel Grand Hyatt, and they proceeded to Block 7 where Mr. De Niro and his daughter Drena would be staying. PW1 states that she had done a recce of this route before Mr. De Niro and his daughter arrived and they dropped them at their suite so that they could get refreshed to attend the evening programme. PW1 further states that as De Niro's chaperone, she was informed that it was her duty to be available for them right from the time they woke up in the morning to the time they retired



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and that she was required to take them for sight seeing, for shopping and generally to make their stay at THINK Fest and in Goa as pleasant as possible.

27. PW1 further states that since it was Mr. De Niro's first night at the festival, the accused had conveyed to her that he wished to drop Mr. De Niro to his room to wish him good night along with her. PW1 then states that after dropping Mr. De Niro, as she and the accused were leaving from the second floor of Block 7 where De Niro's suite was located and they were in conversation, and that it was about 10.20 p.m. at that time. PW1 states that the accused was known to her family for many years and the accused had given her the first job, that the accused was also the father of her close friend, Tiya Tejpal and that ever since PW1 had moved to Mumbai, not a day passed by when Tiya and she did not meet or speak with each other and that even Tiya's younger sister Cara was also close to her and that the family of the accused was like her family. PW1 has further deposed that while she was still in conversation after dropping Mr. De Niro to his



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suite and they came out of the elevator on the ground floor of block 7. PW1 further states that as they were making their way out of the lobby the accused said to her "let's go to wake up Bob" and that Mr. De Niro was referred to as Bob. PW1 further states that though she was confused and unsure about why the accused wanted to wake up Mr. De Niro since they had just wished him good night. PW1 further deposed that since she knew that the family of the accused and Mr. De Niro and his daughter had spent time together in the weeks before THINK Fest in Delhi and in Ranthambore, so she thought that, may be the accused wanted to convey something to the De Niros about the programme or schedule for the next day. PW1 further states that she had no reason to mistrust the accused or think that he would harm her at the time when they made their entry into the elevator in block 7 on the ground floor and after the doors of the elevator closed, the accused began to kiss her and she was pushed up against the side of the lift and the accused then put his tongue in her mouth. PW1 further states that from the first moment the accused did this, she pushed



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him and begged him to stop by saying "T.T. please do not do this. I worked for you and Shoma, you know Paddy. This is not right" but the accused did not listen. PW1 states that her father was also called as Paddy and that the accused was called as T.T. by the entire staff including her. PW1 further states that she noticed that the accused had his hand on the panel of the lift and that soon thereafter the accused went down on his knees and pulled her underwear down to her ankle. PW1 states that she kept begging the accused to stop but it was like being assaulted by a deaf person. PW1 states that the accused then lifted up her dress put his face between her thighs and put his tongue in her vagina. PW1 then states that thereafter she pushed the accused by his shoulders while he was down on his knees and she began to look for the way to exit the lift and seeing this, the accused stood up and put his fingers in her vagina. PW1 states that at this point she became really terrified and kept asking the accused to open the lift and the accused put his hands on her shoulder to stop PW1 from struggling and that when the doors of the lift opened they were on the second floor



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of block 7. PW1 further states that she tried to rush out of the lift but was hampered as she had to pull up her underwear and as she walked out, she was still adjusting her dress. PW1 further states that as they came down the stairs, she said to the accused "it is all wrong. I am Tiya's friend. I work for you and Shoma" and the accused responded by saying "it is all right to be in love with more than one person at the same time" and the accused also said "Well, this is the easiest way for you to keep your job". PW1 states that she and the accused were in the lift approximately for two minutes and that when she came out of the lift she was in the state of shock and trauma and blinking back her tears. The CCTV footage does not support the statement that she was in shock or trauma and blinking in tears.

28. PW1 states that when they came to the ground floor and exited from block 7, she walked towards the main garden area which was full of guests and people, having dinner while the accused walked off towards the performance area. PW1 has further deposed that she was



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unable to cry at that place because it was full of guests and that she took a taxi from Grand Hyatt Hotel to the International Centre, Donapaula, Goa, where the Tehelka staff and she were staying. PW1 further states that when she reached there she went to the room of her colleagues, Ishan Tankha (PW11), Shougat Das Gupta (PW12) and Ajachi Chakraborti (PW57) and also called her colleague and friend G. Vishnu (PW56). PW1 has deposed that she knows Ishan since they were in school together and Ishan was six years older than her and like a brother and he was also the best friend of her partner Aman Sethi (PW65). PW1 states that Ishan was also the photo editor at Tehelka and Shougat Das Gupta was her immediate boss and a trusted colleague and friend. PW1 further states that G. Vishnu and she had worked together for years at the Delhi office and he was also a trusted colleague and friend. PW1 further states that when she called her friends to the balcony of the room, which Ishan and Shougat were sharing, and she told them that the accused had sexually assaulted her in the elevator of block 7 at which time her colleagues were



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shocked and horrified and two of them even offered to resign immediately. PW1 has deposed that as they were calming her down, they discussed what could be done and they suggested to her that she leave Goa and THINK Fest but she could not do so because she was sure that if she abandoned her duty she would definitely lose her job. PW1 further deposed that she is the daughter of a single mother who has raised her on her salary and losing her job would have caused them financial distress. PW1 has further deposed that telling the Managing Editor, Shoma Chaudhary (PW45) was also discussed but they agreed that this would not be possible because Miss Chaudhary was extremely busy as she was moderating almost every panel from 9.00 a.m. in the morning to 7.00 p.m. in the evening and it was almost impossible to meet her privately at that time and they were also concerned about the closeness between the accused and Miss Chaudhary (PW45) and that the daughter of the accused Tiya Tejpal had spoken to PW1 often about the closeness between the accused and Miss Chaudhary due to which they were not sure that she would be impartial to such a complaint



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in dealing with the situation. PW1 states that she was crying in the balcony and trying to call her partner Aman Sethi (PW65) who at that time was the correspondent with the daily newspaper 'The Hindu' in Addis Ababa, Ethiopia. PW1 further states that she kept calling Aman from an application on my phone called Viber but the call kept dropping because the signal was very bad. PW1 states that while she was crying Aman told her to call him from Ishaan Tankha's Iphone.

29. PW1 further states that while in the balcony with her said colleagues, the accused sent her a text message on her phone, that said "the fingertips" and at this time it was around 1.30 a.m.

30. PW1 then states that when she finally managed to call Aman she had already shown the said message received to her colleagues in the balcony and they were disgusted and horrified. PW1 states that on the phone with Aman she did not describe the exact physical details of what the accused had done to her because Aman was



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very far away and he would be disturbed and would have felt helpless. PW1 further states that despite this, Aman consoled her as best as he could, as he knew how traumatized she would be, because the accused had been a friend of her father and was the father of her friend Tiya and was a paternal figure to her and an editor, whom she respected and admired. PW1 then states that she returned to her room while she was still on phone with Aman and she was completely physically, emotionally and mentally exhausted and she fell asleep at around 5.30 a.m. knowing that she would have to return to work in few hours. PW1 then states that on the morning of 8.11.2013, at various time in the morning, her colleagues Vishnu, Shougat and Ishan checked on her because they were worried about her distressed state as they had seen her the night before on 7.11.2013. PW1 further states that on the afternoon of the 8.11.2013 she accompanied Mr. De Niro and his daughter Drena along with the accused's wife Geetan Batra, the writer V.S. Naipaul and his wife Nadira Naipaul to the residence of the Governor of Goa at the Raj Bhavan for lunch and as the high profile



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guests were present she did not say anything to Mrs. Geetan Batra. PW1 further states that after lunch she accompanied Drena and Mr. De Niro back to the Hotel Grand Hyatt where they wished to attend one of the panels at THINK Fest and at this time she met the accused for the first time after the aforesaid incident in the green room where she had accompanied Mr. De Niro and Drena. PW1 further deposed that the accused told her that she was to bring Mr. De Niro and Drena back in time for the session of Mr. Amitabh Bachchan and the accused also told her that after that session the accused wanted Mr. De Niro and Drena to meet Mr. Bachchan and other high profile guests at a private party. PW1 further deposed that after this she took Mr. De Niro and Drena to Panjim for some shopping and sight seeing and brought them back to the Hotel by 6.30 p.m. in time for Mr. Bachchan's session and after the session was over she accompanied Mr. De Niro and Drena to the private party which was being held in block 7 in a lounge called the Grand Club, which was on the ground floor of block 7. PW1 states that at the party there were several Bollywood



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stars, politicians, high profile lawyers and famous guests and she left Drena and Mr. De Niro there and told them that she would return to the International Centre, Goa, change her clothes and get back to the Hotel Grand Hyatt. PW1 further deposed that she went back to her room at the International Centre, Goa and after she took shower and while getting dressed, she received a call from the accused who was using the phone of Thakur Ji the caretaker of Tehelka Mumbai Office and at this time the accused demanded to know where she was and she said she was rushing back. PW1 further states that, at that time she was nervous because she had left the people she was chaperoning and was worried that they might have needed something in her absence. PW1 further deposed that on her way back to the Grand Hyatt she realized that the accused had sent her two more messages around 8.29 p.m which stated "Where are you" and another message which came a few minutes later that said "???" to which she responded saying "I had to sort out some missing packages for Drena and become a bit presentable. See you in ten" and that she sent a



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message to the accused saying "Call Tee. She needs you." PW1 states that Tee is what one calls Tiya, the daughter of the accused, who had messaged her asking to help find her father. PW1 states that at that time she was trying to be as professional as possible but when she reached the Grand Hyatt, she was in a state of extreme stress and anxiety. PW1 further states that the ground floor of block 7 is a lobby where the elevators are located, then a small courtyard with a fountain and then the Grand Club where the private party was being held. PW1 states that as she entered the lobby of block 7 and was making her way across, the accused was already in the courtyard near the fountain and the accused gestured to her to stop and walked upto her and asked her to accompany him saying that "we have to get something from Bob's room". PW1 further states that at this point, she wanted to be as calm and professional as possible but she was still afraid of entering the elevator with the accused because she felt that he might try to assault her again.

31. PW1 then states that while they were waiting

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for the elevator, she kept saying "what does he need. I can go and get it" to which the accused did not respond to this but instead he was talking to Mr. Rohit Chawla, a celebrity photographer, a friend of Mr. Tejpal and also a guest at THINK Fest. PW1 further states that while in conversation with Mr. Chawla, the accused gestured to Mr. Chawla saying that he would call him later and walked into the lift. PW1 states that since the accused was her boss and had instructed her to accompany him she had no choice but to follow the accused inside the elevator. PW1 states that once again when the doors of the lift closed, the accused began to kiss her and she immediately pushed him and said "TT please do not do this. Just stop. This is not right. I had lunch with Geetan today" to which the accused smiled, patted her cheeks and said "Why? OK I will stop." PW1 then states that she turned away from the accused and was facing the door of the elevator and she was shaking and kept on saying "it is all wrong. I am Tiya's friend, I work for you." PW1 then states that at this time the accused reached out and lifted up her dress which was green and black and floor length



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and said "you are unbelievable" and that when the lift stopped on the second floor, she was extremely nervous and rushed out of the lift in blind panic and was looking around for, where to run and she also heard the accused say something behind her back. PW1 then states that when she turned around she saw the accused had come out of the lift and pressed the button of the lift again and walked in the lift and seeing the doors of the elevator open, in confusion and panic she ran back inside because she was not thinking clearly. PW1 further states that inside the elevator, the accused did not touch her until a little bit before the doors of the elevator opened and again he reached out and grabbed her buttock. PW1 states that when the doors of the elevator opened, she rushed out, looked towards the exit of block 7, then rushed towards the Grand Club which she knew was full of people.



32. PW1 further states that, she called Ishan Tankha outside the club and told him that the accused had sexually assaulted her again in the elevator of block 7

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to which Ishan said "what? Again?. What the fuck is wrong with him?". PW1 further states that once again they considered what to do and she still could not afford to lose her job but she was also extremely scared because she felt that the accused could use his position as her boss to summon her anywhere he wanted and when ever he wanted and that he felt entitled to her body. PW1 states that after composing herself she accompanied Drena and Mr. De Niro back to their suite and waited while they got freshened up for the evening dinner when they were to dine with Mr. Bachchan and other Bollywood stars. PW1 further states that by about 10.40 p.m. she accompanied them to the main garden area where the dinner was being served and at that place there was a huge crowd around the table and people were pushing each other to try to take photographs of Mr. Bachchan and Mr. De Niro. PW1 further states that at first she thought that the hotel security would be able to handle this crowd but they could not and when it became too intense Drena and she accompanied Mr. De Niro away from their table. PW1 further states that on the way to



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block 7 they stopped at the place called the Capiz Bar where Drena and Mr. De Niro got dinner and drinks and while they were at the Capiz bar the accused's daughter Tiya Tejpal came and joined them while Drena and Mr. De Niro were absorbed in conversation with each other, she turned to Tiya who she was seeing properly for the first time since the incidents because they both were very busy. PW1 further states that she told Tiya that "you are going to hate me for what I am about to tell you but your father sexually assaulted me last night. He put his tongue in my mouth and he pulled my underwear down" and at this time Tiya interrupted her and said "I saw him do this to someone when I was 13 years old, it does not surprise me anymore." PW1 then states that even though Tiya said that she was not surprised, PW1 could tell that she was disgusted and upset, as PW1 mentioned before that they were very close friends and soon thereafter Tiya left Capiz Bar. PW1 further states that once Drena and Mr. De Niro had finished dinner she accompanied them back to block 7 and dropped them outside their suite and at that time they asked PW1 to convey to the accused that they were



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very upset at the way Mr. De Niro had been pushed around by the crowd and thereafter PW1 left block 7 around 11.30 pm. and she looked for the accused to convey this message and found him in the main garden area at a long dining table full of guests and she called the accused away from the table but still within the view of the guests so that the accused would not be able to touch her again and at this time told him that "Bob is really upset. He got mobbed really badly today". The accused replied "I do not give a fuck about Bob. I cannot believe you went and told Tiya." To which she said "what happened was not right. There is no way I could have kept it from her." To which the accused said "She is my daughter. Do you even understand what that words means. Get away from me. I am so fucking pissed with you right now." PW1 then states that she left crying from that spot and was completely broken as she had realized everything that the accused's actions would destroy i.e her friendship with Tiya, her relationship with Shoma whom she considered a mentor, her relationship with the organization and her family's faith in the accused. PW1



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further states that she was still crying when she found Tiya in the main garden area standing outside her room PW1 said "you told him what I told you" and Tiya replied "as soon as you told me I wished that you had not but you cannot tell me what to say to him. There was no other way to do this. I told him to keep it in his pants" and that PW1 was still crying and PW1 said to Tiya "I will probably lose my job." To which Tiya agreed and said "it will be a bad phase but it will pass". PW1 states that Tiya did not want the guests to see PW1 crying, so Tiya took PW1 to her room via the verandah and left PW1 there. PW1 further deposed that she had to remain at the Grand Hyatt to plan the itinerary for Mr. De Niro and Drena for the following day but the Tehelka staff had retired to the International Centre, Goa by then. PW1 then states that since she was afraid of waiting alone or that the accused might summon her again so PW1 called her friend Raghu Karnad (PW 13) who was also a guest at THINK Fest and ex-employee of Tehelka and when PW1 called Raghu he was on his way to Panjim but when he heard her crying he knew something terrible had happened and PW1 asked



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him to turn back and come to the Grand Hyatt. PW1 further stated that Raghu met her outside Tiya's room in the main garden area and at this time she told him that the accused had sexually assaulted her on two occasions and that he was very angry because he knew that PW1 was not going to be keeping quite. PW1 further stated that Raghu (PW13) attempted to calm her down and also talked to her about her options to either leave THINK Fest or wait till it was over to tell Miss. Chaudhary what had happened but he also felt that this was a bad idea given the closeness between Miss Chaudhary and Mr. Tejpal. PW1 further states that Raghu agreed that the only way this would probably end was with PW1 losing her job and she waited with Raghu in the main garden area and then outside the Think Bazar waiting for De Niro to summon her to plan for next day but when she received the call from Mr. De Niro's private number PW1 went to block 7. PW1 further states that she does not remember the time, but it was late, however the next day Mr. De Niro and Drena wanted to go out for sight seeing, shopping, to the beach, to meet friends etc. And PW1 had to plan their



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entire day's schedule as well as all the things they would require such as Indian Currency, Food, chargers, security, multiple cars, alcohol, sun screen, body guards etc. and when PW1 finished making this list and the planning was done she left the Grand Hyatt, went back to the International Centre, Goa where she once again contacted her colleagues and friends from the night before and told them that the accused had sexually assaulted her again in the elevator of block 7 and that now the accused was extremely angry with her for having told Tiya. PW1 further states that she also spoke to her partner Aman Sethi on Viber and told him about what the accused had done again and at this point PW1 was still very afraid of losing her job but she was also worried about her physical safety and that the only reason PW1 felt some what safe was because she would spend the entire next day away from Grand Hyatt and away from the accused.



33. PW1 further states that the only thought she had was to discharge her duties, get the De Niro's on a plane to Mumbai and get out of the THINK Fest and the

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next morning on her way to the Grand Hyatt, PW1 states that she texted a friend and lawyer Rebecca John and told her over a series of messages that she had been sexually assaulted by the accused and she did not want to lose her job for some thing that was not her fault. PW1 further states that when she reached the Grand Hyatt she also called her mother (PWS3) and told her that the accused had sexually assaulted her on two occasions and that she had told the daughter of the accused about it and that the daughter had confronted the accused. PW1 states that she also called her friends Harsimran Gill (PW15) and Aastha Atray both of whom were guests at Think Fest and asked them to meet her near the swimming pool of the Grand Hyatt and PW1 told them what had happened, to which both expressed shock and worry about the well being of PW1. Pw1 states that soon after she had to accompany Mr. De Niro and Drena for their day out and she took them as planned to a private beach in Arsolem which is also owned by the Grand Hyatt and once they were there she ensured that Drena and Mr. De Niro had whatever they required and kept talking and walking



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away from them to give them privacy and to call her friends and at this time PW1 called Mr. Naresh Fernandes who was an Ex-college batch mate of her step mother as well as Mr. Sreenivasan Jain (PW61). PW1 further states that she needed to speak with them because she wanted to convey to them that she wanted to make a complaint or do something about being sexually assaulted by the accused but she knew that because of the accused incredible wealth, connections and power the accused could destroy her and end her career if she were to make such a complaint. PW1 states that through the afternoon she made sure that Drena and Mr. De Niro had no idea of the horrible things that she was going through and while PW1 was on the beach the accused made contact with her once again and the accused sent PW1 a message on whatsapp saying "I hope you told Tee that it was just drunken banter and nothing else." PW1 then states that since this was the first time the accused had contacted her since lashing out at her the night before she was still very afraid of the accused and she replied saying "I told her we were both drunk." To which the accused



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responded once more saying that "And just banter and nothing else." PW1 states that she did not reply because there was no way what the accused had done to her could be described as banter. PW1 states that realising that PW1 was not co-operating with this attempt to sugar coat the things the accused replied once again saying "Why, what's happened" to which PW1 did not reply. PW1 further states that the message that was thereafter sent by the accused that convinced her that the accused was not ashamed of his actions and instead was trying to make her feel ashamed for telling Tiya and in this message the accused said "I cannot believe you went and told her the smallest thing. What an absence of understanding of a parent child relationship "PW1 then states that after this she made sure to stay as far away from the accused as possible except when they had to talk about work and at this time too, she made sure that they only talked in extremely public situations like the green room, the lobby or on the phone. PW1 further deposed that on that day as well when she returned to the Grand Hyatt she made sure to stay as far away from



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the accused as possible and stay within sight of her friends Ishan Tankha, Raghu Karnad, Aastha and Harsimran. PW1 further states that since 10.11.2013 would be the most hectic day for her as this was the day Mr. De Niro had his session and it was also the last day that Drena and Mr. De Niro would be in Goa. PW1 states that after all of this she would have to make sure that they reached Goa Airport in time for private Jet to Mumbai. PW1 further states that as she knew the next day schedule was packed she spent that night at the Grand Hyatt in a room reserved by THINK Production and the next morning she discharged her duties assigned to her. PW1 states then during the course of the morning of 10.11.2013 she spoke to the accused on phone few times to co-ordinate the De Niro's movements and also met the accused in the green room but there were many people present there and PW1 made sure to stay as close to the guests as possible because she knew the accused would not be able to intimidate her in front of them. PW1 states that even though Drena and Mr. De Niro had asked her to accompany them she knew that her duty was over



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and it was no longer necessary for her to be there and once they had left she had no other work to distract her from confronting the fact that she had been sexually assaulted by some one whom she trusted. PW1 further states that at the International Centre, Goa she packed her belongings, checked out of the International Centre and was ready to go home, at this time she realized that her mother was staying in Mumbai in her one bedroom flat along with three of her colleagues whom she had never met and that her mother was in town in Mumbai for a conference and would be busy all day. PW1 states that she really wanted to see her mother and break down, cry and discuss things with her but she would not be able to, because her house in Mumbai where her mother was staying at that time was full of strangers.

34. PW1 further states that she therefore called her friends Harsimran Gill (PW 15) and Aastha Atray who knew about what had happened to her and asked them if she could stay with them as she knew that they would let her process her grief and trauma at being sexually



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assaulted and she went to Casa Paradiso Hotel in Panjim where they were staying and spent that night there. PW1 further states that the next morning Aastha returned to Mumbai and Harsimran and PW1 went to stay at a friend's home in Vagator and stayed there between 11th to 15th of November, 2013 as she needed this time to think about her options for several reasons. PW1 further states that although she wanted to complain but she was scared she had been raised by a single mother and had struggled financially and therefore losing her income would have been distressing for PW1 and her mother. PW1 further deposed that a few months prior THINK Fest 2013, her father had suffered a stroke and was on the ventilator for several weeks in the critical care unit of the hospital and that the doctors had told them that they could not assure them how long he would survive once he was taken off from the ventilator. PW1 further states that in such a state she did not think that her father would be able to withstand the fact that the accused had sexually assaulted her. PW1 states that it was not just her father and she was not sure whether anybody in her family or



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that she cared about would be able to withstand the pressure and the humiliation that would follow a complaint. PW1 further states that her job at Tehelka was her first job and that the editors there had frequently told her that her writings reminded them of her father. PW1 states that although Tiya stood by her at that time when PW1 had told her that her father had sexually assaulted her, she knew that the friendship with Tiya would end if the complaint became public. PW1 states that she was also afraid of the incredible wealth and power the accused would use against her and the character assassination and slander that would follow, and that this turned out to be right as it became virtually impossible for her to find work again because the accused and his family humiliated her, lied about her, consistently in professional and social circles. PW1 has further stated that when she was thinking about her options she spoke with her mother, step mother, sister, partner, Raghu Karnad, Rebecca John and may be few others. PW1 then states that by the end of her stay in Vagator she had decided that the accused could do anything such as end her life, destroy her career



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but finally she would not be able to face herself if she did not speak up about being sexually assaulted, especially when in her writings she had urged other women to do so.

35. PW1 further states that on the night of 15.11.2013 Harsimran Gill and PW1 returned to Mumbai and reached on 16.11.2013 morning by bus. PW1 then states that by this time she had also told her partner Aman about the physical details of what the accused had done to her and also wrote down a summary of everything that had happened because she knew this would be important if she were to make a complaint. PW1 states that at this time she was still afraid and undecided about going to the police.

36. PW1 further states that on the evening of the 16.11.2013 the accused began to contact her through text messages at around 8.00 p.m. once again and that the accused in his message said "Have you spoken to Tee? Is she alright?" to which she responded "Why would



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she be Ok about the fact that you sexually assaulted her best friend that is me" and the accused replied once again saying "What's with saying this awful stuff?" to which she responded "You are lying and you know it. Do not contact me again." And then the accused sent her another message saying "For so long I treated you like one of my best kids and now because of one drunken banter you so easily say such horrible things" and she replied "It was not once Tarun, it was twice and I asked you to stop repeatedly. I was certainly not drunk and it was not banter. You did the most horrible things." And the accused said "Oh, so that's what you told Tee. No wonder she is so madly upset. I won't contest anything with her. I will let time and my fatherly love heal what it can." And she did not respond and the accused sent her another text message saying "I don't think I have been this saddened in the longest time." PW1 then states that it had become clear to her that the accused was not ashamed and was now trying to create a devious defence for himself since he wanted to know how his daughter was he could easily have asked his wife, his other



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daughter or anyone in his family instead of messaging her and once again trying to claim that the sexual assault was "drunken banter". PW1 further states that what the accused had done could in no way be described as drunken banter and it was most definitely sexual assault committed by someone whom she had trusted and was her Editor in Chief. PW1 further states that on 18.11.2013 at about 9.00 am she sent a complaint to the Managing Editor of Tehelka Miss Shoma Chaudhary at Exh.733 (1 colly) and that despite the closeness between PW45 and the accused PW1 wanted to believe that Miss Chaudhary who had been a mentor to her would do the right thing. PW1 then states that she wanted the organization to stand by its values and at that time she also copied on the email her three colleagues who she had informed at the event immediately after she was sexually assaulted and these colleagues were Ishan Tankha, Shougat Das Gupta and G. Vishnu and even requested PW45 Miss Chaudhary to verify any aspect of her complaint with these three colleagues should she require to do so. PW1 states that she also attached a



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summary of all that had transpired when the accused had sexually assaulted her to the email complaint to PW45. PW1 further states that in her email she asked PW45 Miss Chaudhary to set up an anti sexual harassment cell at Tehelka to investigate the matter and also asked that at the very least the accused should apologize to her and that an acknowledgment should be circulated among the staff of Tehelka. PW1 then states that this email complaint, the attached testimony as well as all the replies of Miss Chaudhary to her have been submitted to the police and the court by her.

37. PW1 further states that on the 19.11.2013 the accused sent her emails Exh.733 (2 and 3) and Exh.766 (pages 0373-0375 of Vol.3) acknowledging and apologizing for the fact that the accused had forced himself upon her "despite clear reluctance" and PW1 states that these emails along with her responses at Exh.733 (5 and 11) and also at Exh.766 Pages 0376-0378 and pages 0382 to 0386 of Vol. 3 have been submitted to the police and court. PW1 further states that these



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emails were sent to her by the accused and Miss Chaudhary to the entire bureau of Tehelka have also been submitted to the police. PW1 further states that she also submitted all the WhatsApp and text messages from the accused that were sent to her. PW1 also states that despite the fact that she wanted to trust Miss Chaudhary to do the right thing she was also worried that she would choose her closeness to the accused over doing the right thing and standing by her and for this reason she recorded the calls in which she spoke with Miss Chaudhary and PW 45 spoke to her on her cell phone, a Samsung Galaxy S2 model and these conversations were copied on the Sony DVD's by her at Exh.333 which were also submitted to the police.

38. PW1 also states that on 22.11.2013 the accused's daughter showed up at her mother's house PW 53 mother of the victim, in New Delhi demanding to know who her legal counsel was, and what she wanted as a result of speaking about being sexually assaulted by her father and asking her mother to protect the accused and



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her mother filed an FIR regarding this emotional pressurization with the Delhi Police at Exh.672.

39. It is further stated by PW1 that in her conversations with Miss Chaudhary it became clear that she was protecting the accused by saying things like "he is an attractive man" and "he mistook your reluctance as part of play" and other such things and consequently PW1 felt constrained to resign from Tehelka on 26.11.2013, a copy of the resignation letter has also been submitted at Exh.733 (18). PW1 states that in total there are about 23 emails submitted and on 26.11.2013 her statement was recorded before the police and on 27.11.2013 she appeared before the Judicial Magistrate in Panjim. PW1 further states that on 28.11.2013 a panchanama was conducted in which she showed police officers the scene of crime at the Grand Hyatt in the course of the day there were certain details which had occurred immediately after being sexually assaulted became clearer to her. PW1 then states that she had forgotten these details because they followed seconds after she came out of the lift, due to her



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state of extreme shock and trauma. PW1 then goes to describe these details are as follows : That on the night of the first incident i.e on 7.11.2013 when they came out of the lift they were on the second floor not the ground floor and at that time she had believed that she rushed out of the lift first but in fact she could not rush out first because her movement was hampered by the fact that her underwear was at her ankles, her dress was lifted up and she was in a disheveled state and she could not have rushed out in such a state into a public area. That as they came down from the second floor via the stairs was when the accused said "it is alright to be in love with more than one person" and "well this is the easiest way for you to keep your job". PW1 clarifies the incident of the second day i.e on 8.11.2013 that she had mistakenly believed that the accused held her by the arm and took her into the lift when in fact the accused had done this on the first day. That on 8.11.2013 the accused had merely used his authority over her as her boss to ask her to accompany him by saying "Bob needs something from his room" and at the time she and the accused entered the lift, the

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accused was also in conversation with his guest and friend, the photographer Rohit Chawla and that on this day as she and the accused emerged from the lift on the second floor she had already been sexually assaulted twice and was in a state of blind panic and had she been thinking clearly she would never have followed the accused back into the lift on the second floor but she was not thinking clearly at that time. PW1 further states that these clarifications were also made by her at the time the panchanama was being conducted at the Grand Hyatt.

40. PW1 states that on 28.11.2013 her mobile phone which included evidence in the form of SMS, recorded conversations was also seized and around a week later, the police came to her residence in Mumbai and also seized the clothes she had been wearing at the time of the incidents.

41. PW1 states that in January 2014 she made a supplementary statement in which she submitted to the police the copies of Tehelka Magazines (MO No.18)



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which carried her stories and also handed over the official letters such as letter of appointment, letters of promotions, relating to salary, letters of recommendation etc. PW1 further states that in January 2014 she also forwarded to the police two emails one from Harish Iyer (PW 22) at Exh.437 at pages 0798 and 0799 of Vol. 4 a guest at THINK Fest stated that she was not "participating with elan" as the accused had been claiming to the media and she also forwarded an email from Miss Chaudhary in which PW45 had instructed her to take Mr. De Niro to the beach "get into the waves and get the vibe." at Exh.733 (22) at pages 0212 and 0213 of Vol. 2.

42. PW1 states that in July 2014 she also appeared for a panchanama in which she identified her voice and Miss Chaudhary's voice on the recorded conversations and this panchanama was held at a place, which she thinks is called Art and Culture Centre, in Panjim.

43. PW1 further states that she has also filed

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two additional complaints with the Cyber Police relating to this case, the first complaint was pertaining to a photograph of herself taken with the accused and Mr. De Niro in the crowded green room was circulated via email server to various people that she had professional and personal relationships with the caption "Does she look sexually assaulted?". And the second complaint was in relation to someone impersonating her with an email address that looked similar to her email address and in this manner sent an email to her partner Aman Sethi saying that her phone has crashed and to send all their personal photographs together on that email ID.

44. In the cross examination PW1 states that she is a Journalist and a Writer by profession. PW1 admits that she was appointed as trainee journalist w.e.f. 08.01.2010 in Tehelka and as a trainee journalist her salary was Rs. 12,000/- per month approximately and from time to time the salary was revised. PW1 admits that she worked as a trainee journalist in Tehelka for six months and she does not remember the period of her



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internship. PW1 admits that besides Tehelka there are other media houses at Delhi at that time the NDTV, Outlook, India Today. PW1 states that when she was a child she first met the accused at the Outlook Office and cannot state in which standard she was studying at the time when she first met the accused she was studying in school and does not remember she first met the accused. PW2 states that when her father worked at Outlook, she met the accused every few months at the office and after her fathers' accident she met the accused rarely but the accused expressed support regularly to her family and states that she did not meet the accused every week or every month and she did not go out with the accused or his family before joining Tehelka. PW1 states that she did not meet the accused in the office at Tehelka before joining Tehelka and she do not know where the accused was staying when she first met him. PW1 states that the accused may have visited her in her father's house and that her parents were divorced when she was 4 years old. PW1 admits that she was staying with her mother and used to occasionally visit her father and after her father



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met with an accident their source of income was her mothers' salary as she was working in one Company. PW1 states that there were no financial transactions between her family and the family of the accused and she does not remember for how long her father worked at Outlook and also does not remember when her father joined Outlook. PW1 states that the accident of her father took place when she was 11 years of age and she may have visited the house of the accused along with her father prior to his accident but cannot state approximately how many times she met the accused prior to her joining Tehelka. PW1 states that she cannot say how many times approximately she spoke to the accused prior to joining Tehelka. PW1 states that the accused used to ask her how her school was and what books she was reading and she did not consult the accused for taking any decisions in the school prior to joining Tehelka. PW1 states that she did not memorize the phone number of the accused but it was mentioned in their personal phone diary. PW1 states that neither the wife of the accused nor the accused took her out for dinner or for films or any other outings prior to



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joining Tehelka. PW1 states that she had mobile phone as well as landline prior to joining Tehelka and she started using my mobile phone at the age of 17. PW1 states that the accused's number was not stored on her mobile but his daughter's number was stored on her mobile.

45. PW1 states that she has consulted the accused about her career plan prior to joining Tehelka when she was in college but she did not remember the exact year and she did not consult the accused about her college plan. PW1 states that she sought the advice of the accused in which field she had to go when she consulted the accused of her career plan and she had not decided overall what to do when she was in college and she did not think of joining any journalism course after finishing her college. PW1 states that her purpose of conversation with the accused was whether to join journalism or not and that the accused told her that India needed good journalist and she should follow the footsteps of her father and at that time she thought that the accused was a great journalist and she consulted



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other persons besides accused before joining journalism such as Charu Soni, Bhavdeep Kang and Yuvraj Ghimre but she does not remember to which media houses the above mentioned persons were in nor did she know their designations. PW1 states that joining Tehelka was not her first option and that her first option was joining Outlook and she had applied at Outlook and they were not hiring at that time. PW1 states that she did not ask the accused before joining Tehelka about her wish to join Tehelka. PW1 states that she did not discuss private issues with the accused besides the issue of joining Tehelka. PW1 states that in her career as a journalist she has written several articles on the issue of violence against women and sexual abuse against women including rape apart from other subjects and have read the text of the offences and the definition of offences against women online. PW1 states that Tehelka may have printed many such articles but she does not recollect if she has read any articles besides her own and states that she has read work written by the accused and admits that the accused has written number of articles and published books.



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PW1 states that she knew some of the work by the accused and she had appreciated the work which she had read and she had profound respect for the accused at the time when she joined Tehelka and her interview was taken by Shoma Chaudhary the Managing Editor of Tehelka. PW1 states that she knows Gaurav Kapur, G. Khamba, and states she knew Gaurav Kapur briefly while she was at Tehelka in his professional capacity and they were briefly friends and may be twice or thrice they have met. PW1 states that her friendship with Gaurav Kapur was for about two months and she happened to meet G. Khamba as a friend but there was no professional reason and she does not remember even by approximation for how much time G. Khamba was her friend. PW1 states that she knows Ranvijay Singha who was hosting a programme on MTV channel namely Roadies and his nickname was Donny and he was introduced to her by a friend many years ago and they have been friends and her interaction with Ranvijay Singha was not in her professional capacity and they are still friends and she met Ranvijay Singha over the years, prior to the incidents



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and after the incidents. PW1 states that she has interviewed Rakesh Mehra once but not interviewed cricketer Yuvraj Singh and she does not know him but knows him as a cricketer as others do. PW1 states that she agrees that the above mentioned persons are famous personalities.

46. PW1 admits that she has produced her mobile handset before the police which was seized under panchanama and she does not know if the mobile handset which she had produced was old or new but states that the sim card was bought by one Shivaji Phirake who was an employee of Tehelka and that he had procured the sim card for her and she was paying the bills. PW1 states that after her mobile was seized by the police she bought a new mobile. PW1 admits that when police seized her mobile she had thousands of contact numbers saved on her mobile and she has recovered all those numbers again and the mobile numbers of the persons referred above were saved on her mobile except of Yuvraj Singh. PW1 states that she does not have a friend by



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name Anchal but have heard the name Anchal before and also does not remember if the mobile number of Anchal was saved on her mobile which was attached and she does not remember the name Divyak and she does not think she has heard this name before. PW1 states that Harsimran Gill is her close friend whose nick name is Bikki. PW1 states that she knows Harsimran Gill since the year 2011-12 as he is a close friend of her's and till today she is in touch with him. PW1 states that she does not remember if she has deleted any contents from her mobile before handing over her mobile to the police but states that she may have deleted.

47. PW1 states that she had various WhatsApp groups on her mobile phone prior to its seizure by police and since she had WhatsApp groups she must have chatted on the groups and does not remember if she had created any WhatsApp groups prior to the incident. PW1 states that she is not in a position to tell even if the mobile is opened whether any WhatsApp group was created by her prior to the incident and that she is not a



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technical expert. PW1 states that she was on the WhatsApp group of strangers as well as friends as a journalist and the members of the WhatsApp group may be two or more.

48. PW1 states that she knows a girl by name Nupur and she is friendly with Nupur since the year 2011-12 till date and she also knows one girl Aastha since the year 2009-10 till date and she is her close friend. PW1 states that she knew Nikhil Agarwal in Mumbai and he is not her friend and she knew him since 2012. PW1 states that after the incidents in the year 2013, she has no contact with him. (However, the whatsapp chats/messages if seen, there are 4000 messages/chats with Nikhil Agarwal).

49. PW1 states that she knows Sharanya since school and she is still her close friend and she knows Malika as her acquaintance. PW1 states that her mobile was password-protected and that she does not remember the password but she had given it to the police and she



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thinks that the police have mentioned it in the panchanama. PW1 states that the mobile was last used on 28.11.2013. PW1 states that she knows Naresh Fernandes and Advocate Rebecca John who is a Sr. Advocate from Delhi and that there are a number of calls to Rebecca John after the incidents and a few calls to Naresh Fernandes. PW1 states that she knows Srinivasan Jain from NDTV and his nickname is Vasu and she has known Srinivasan Jain since she was in school. PW1 states that after the incidents became public there was a call exchange between her and DIG O.P. Mishra and so also with Investigating Officer Mrs. Sunita Sawant.

50. PW1 states that Indira Jai Singh was a friend of her stepmother and her number is saved as in her nickname Brahmastra. PW1 states that there was a call exchange between her and Ms. Jai Singh after the incidents became public. PW1 also admits that her statement was recorded for the first time by the police on 26.11.2013 and admits that Shamina Shafik was a member of National Commission of Women and she had



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few calls exchanged with I.O. Sunita Sawant prior to recording of her statement. PW1 states that Raghu Karnad is her close friend, who is the same Raghu Karnad and that she knows Sunaina, who had exchanged a message on 21.11.2013 which was received by her and she knows Homi Adjania a film Director and she had interviewed him for Tehelka. PW1 states that prior to the incidents she knew Rebecca John and she had contacted her for quotes for stories and she knew Indira Jai Singh in her professional capacity. PW1 states that there are two girls by name Anchal in her phone list and she knew Kavita Krishnan in her professional capacity. PW1 states that she had contacted Rakesh Maria and Hemant Nagrale for quotes for her stories. PW1 states that she saw the messages collected by the police from her mobile when she handed over her phone to the police and she must have seen lakhs of messages on her mobile sent or received by her. PW1 states that she used to normally read the messages before she sent them and used to reply to the messages only after reading them. PW1 states that she does not remember if she had sent 4000



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messages to Nikhil Agarwal from 22.07.2012 to 08.11.2013 and that Nikhil Agarwal and she were friendly. PW1 admits that she has sent numerous messages to her friend Bikki in the period from 2012 to 2013 and it is possible that she has sent numerous messages to Nikhil Agarwal from 22.07.2012 to 08.11.2013 and admits that each message sent to Nikhil Agarwal must have had a particular purpose and she does not remember the particular purpose of any single message sent to Nikhil Agarwal. PW1 states that she does not remember the particular purpose for which the messages sent to Harsimran Gill @ Bikki who is a witness in this case but she does not remember the subject matter of any of the messages exchanged between her and others due to lapse of memory due to passage of time. PW1 admits that the purpose of the messages can be ascertained only by reading the messages and whether they are personal or professional can be ascertained by reading the messages. PW1 states that she does not mix up professional relation with personal relation. PW1 states that she visited the house of Nikhil Agarwal and the purpose of visiting the



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house of Nikhil Agarwal was casual friendly purpose. PW1 states that she has sent messages to Nikhil Agarwal and Nikhil Agarwal has sent messages to her.

51. PW1 states that the memories from her childhood and the period prior to joining Tehelka have created the impression of father figure about the accused. PW1 states that she has read the provision of law regarding rape while writing article on rape. PW1 states that she is aware about the Review Commission appointed to review the existing rape law and she knew about the provisions of new amendment very vaguely. PW1 states that she does not remember if scroll.in was in existence in the year 2013 and she applied in the year 2016 in scroll.in and she does not remember when she first thought of applying in scroll.in and that she applied three years after the incidents. PW1 states that Naresh Fernandes is the Editor-in-Chief of scroll.in and she has spoken to him prior to applying in scroll.in.

52. PW1 states that she reached Goa on

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6.11.2013 for the THiNK Fest and does not remember if she was thinking about joining scroll.in when she reached Goa and does not remember if scroll.in was in existence at that time. PW1 admits that she has sent the message to Naresh Fernandes on 7.11.2013 at 12.39p.m. which is at serial No.5610 wherein she has stated that "Oh good. I'm applying for a job at this excellent publication called scroll soon so feedback is always welcome:)". PW1 states that there is a smiley and therefore states that it was a joke and she never applied for the job. PW1 states that Naresh Fernandes never visited her house but she has visited his house once every two months or so. PW1 states that she must have been on twitter before November 2013 and has tweeted links to articles, jokes, memes etc. occasionally commented on social issues. PW1 admits that getting a grant for writing a book is a great opportunity for every writer and she is aware of the New India Foundation grant and she had applied for the grant in August 2013. PW 1 states that she received the first cheque of the grant from New India Foundation in early 2014 but she does not remember the month and the



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amount of money of the grant. PW1 admits that normally it is difficult to forget such a circumstance. The grant was for writing a book on Violence against women and the status of women in India. She has stated that she had applied for the grant in August 2013. PW1 states that she was one of the applicants who was short listed.

53. PW 1 states that she knew Miss Suzette Jordan before she died and that she first met her in November 2013. PW1 states that she met Suzette at THINK Festival but she does not remember if it was on 7th or 8th of November 2013 and she was supposed to shadow her at THINK Festival in 2013. PW1 states that she does not remember if she had deleted any messages before handing over the mobile to the police and did not check any messages. PW1 states that she knows Srinivasan Jain and she may have sent a message to Srinivasan Jain stating that she has been short listed for Guha's New India Foundation grant for her book on rape. PW1 admits the message sent by her to Srinivasan Jain on 10.04.2013. PW1 states that she may have discussed



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with Tiya Tejpal regarding the book and she had sent the message on 6.5.2013 to Tiya stating that "But. The rape book tee." and states that tee means Tiya. PW 1 admits that she has sent the message dated 6.5.2013 "It's my raison de etre as of now". PW1 admits that she described her intended book for New India Foundation fellowship as a rape book and admits that her name appears in the list of New India Foundation fellows in December 2013 and she was selected for the same to write a book on the changing narratives of violence against women. PW1 states that the fellowship was for Rs.1,00,000/-p.m. for twelve months. PW1 states that the reference of New India Foundation grant referred above is fellowship and she has spoken to Bikki @ Harsimran Gill about the THINK Fest 2013 prior to the beginning of the festival and she does not remember if she referred to Suzette but PW1 states that she messaged on 5.11.2013 to Bikki "Suzette is at THINK though" she does not remember if on the same day at 11.22.55a.m she had messaged Bikki that " I need to figure a way to get her on board with my project" but thereafter admits that it was sent by her. PW1



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admits that the message "Thankfully I'm her shadow too" was sent by her to Bikki. PW1 admits that the two messages that "Suzette Jordan was the Kolkata Park Street rape survivor" "She was the first one to go public with her identity post dec" were sent by her to Bikki and the message "Um Suzette?" was received by her from Bikki. PW1 states that she wanted Suzette on board for her intended work for doing New India Foundation fellowship and also for Tehelka magazine interview.

54. PW1 states that she was not preparing for interview for New India Foundation fellowship but states that Bikki may have messaged her "How's the prep for Grant by the way?" on the same day at 11.20.29a.m. and the witness admits that Bikki messaged her about the same and she may have messaged Bikki on 5.11.2013 at 11.29.18a.m. that "Hopefully she'll like me a bit and agree to help". PW1 admits that the said message was sent by her to Bikki. PW1 admits that both these statements made at page 72 are inconsistent with the messages sent by her and the same are incorrect. PW1

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states that she is aware of the fact that she has to speak truth whether she remembers it or not and states that she does not remember her conversation with Suzette on 7th or 8th of November 2013. PW1 states that she already had the phone number of Suzette on her mobile.

55. PW1 states that she knew Ishan since school and is a very close friend and that she and Ishan both trust each other and don't doubt each other. PW1 states that Ishan Tankha is a very close friend of her now husband Aman Sethi. PW1 states that she and Andy were sitting on the same floor in the Delhi office of Teheika and that her email ID was nish.jha@gmail.com and states that on 15.03.2013 was the 50th birthday of the accused. She admits that she had sent an email on 18.2.2013 to the daughter of the accused Tiya Tejpal as the family had asked the staff to send wishes for his birthday and for a booklet they were compiling. PW1 states that she had sent this email to Tiya and Cara daughters of the accused for the 50th birthday booklet of the accused. The email sent by the victim on the 50th birthday of the accused

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clearly disproves that she is having fatherly relation
"when I first met T, I was an intern trying to make
myself as unobtrusive as possible on the edit floor."

56. PW1 states that she never had any
personal contact with Yuvraj Singh and she does not know
if he had ever tried to contact her and does not recall if
Yuvraj Singh has ever tried to contact her through any
person. PW1 states that she is a qualified Yoga teacher
and reasonably physically fit. PW1 states that she does
not know whether cricketer Yuvraj Singh wanted to hire
her as a Yoga instructor and she has never spoken to
Yuvraj Singh and they have one common friend by name
Ranvijay Singh. PW1 states that she had sent this
message "yuvraj singh wants to hire me as his yoga
instructor" dt. 1.10.2012 to her editor Aditi Saxton and
states that it is a joke but there is no smiley. PW1 admits
that the said message "I'm meeting him once he's back
from the world cup" was sent by her to Aditi Saxton and
Aditi replied to the said message that "I'm so psyched for
you, you're going to do it, right?"

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57. PW1 states that Danny is not a celebrity and he is an Ad Film Director and she met Danny in Bombay but she does not remember when she met him. PW1 states that she moved to Bombay in the year 2012 and it was after that she met Danny last in the year 2013 in the last week of November for a friendly purpose. PW1 states that she chaperoned Robert De Niro and not Bob Geldof which is an incorrect statement.

58. PW1 states that she knew Vasu since she was a child and Vasu is Shrinivasan Jain. PW1 states that she does not remember if in July 2013 she met Vasu @ Shrinivasan Jain and that Vasu had come to her house when she was a child to meet her father, cousin sister and her friend as they all worked in NDTV at that time and she does not remember her age at that time.



59. PW1 states that there is nothing objectionable about consensual sex. PW1 states that her knowledge is based not only on such narrations of the rape victims but also on the narrations of people

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supporting such rape victims such as their family members, police officers and counsellors. PW1 states that she might have read about the factors responsible for conviction or acquittal of rape cases. PW1 states that she might have written about the changes in law in respect of rape cases after the Nirbhaya case. PW1 states that she is not aware that under the old law inserting finger in the vagina did not constitute the offence of rape but under the new law such inserting of the finger constitutes rape. PW1 states that she does not know that when a report of sexual assault is made immediately, there is a possibility of finding of medical evidence such as presence of semen, marks of violence, presence of saliva, exchange of body fluids and DNA fingerprinting. PW1 further states that she is not aware whether medical evidence disappears with the passage of time and whether there is a possibility of medical evidence disappearing if the FIR is delayed. PW1 admits that she agrees that she has no understanding of medical evidence in rape cases. PW1 admits that prompt filing of FIR is an important factor in rape case. PW1 states that she does not know that while





reporting facts constituting a sexual assault to the police, the victim should furnish the important details of the sexual assault. PW1 states that she cannot say if the victim of rape hides or suppresses important details of a sexual assault. PW1 states that she does not know that unless a victim discloses to the police the important facts or facts within her knowledge, it is difficult for the police to proceed investigation in the proper direction. PW1 states that she does not know that if a victim does not disclose about the sexual assault, it will not be possible for the police to investigate the sexual assault. PW1 states that she did not file any police complaint but she was approached by the police and as a law abiding citizen she co-operated with the police. PW1 states that she wanted to lodge a complaint but she was scared of the police process so she made a complaint to her organization. PW1 does not remember the exact date when she had thought of lodging complaint immediately after the first incident took place and she knew that she had to take some action but she did not know what would be the action. PW1 states that she did not approach the



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police immediately after the first incident, as she was too afraid of the police which show that the victim is making a false statement that she is afraid of the police which is clear from the incident narrated by her which took place at Delhi against the police officer.

60. PW1 states that before filing of any complaint to any one she tried to write down her recollection as she best remembered them. PW1 states that it may have been on the 15.11.2013 when she wrote down her recollection and she does not remember the number of pages she wrote down. PW1 states that she does not think that she took a printout of these notes and she had typed these notes on a laptop. PW1 states that as a journalist she is aware of the importance of notings. PW1 states that she wrote down her recollection of the events as best as she could remember but she cannot say how correct or incorrect it was and states that she must have read her writing of these recollection, once. PW1 states that she does not remember whether she produced these notes to the police and admits that the police seized



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number of documents from her under panchanama. PW1 states that she may have emailed the said notes to her friends and she does not remember the date, it may have been after at least 9 or 10 days from the first incident that she had emailed the said notes to her friends and she thinks that she has preserved the said recollection notes and these notes were not typed out by her on her laptop, but it was a borrowed laptop either of Harsimran or Nupur. PW1 states that she was in Goa when she prepared the said notes during the THINK Fest.

61. PW1 admits that her visit to Goa at that point of time was for official work and she did not ask Harsimran or Nupur whether the said notes were preserved and she does not remember when she last saw the said notes and she does not know whether the said notes were the first documented version of the incidents. PW1 states that prior to preparing the said notes, she had sent text messages about the incidents to her friends and also to her family. PW1 states that she does not think that she had sought the opinion of her friends to whom



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she had emailed the said notes and does not remember whether her friends Ishan Tankha, Shougat Dasgupta and G. Vishnu responded to the said notes. PW1 states that she may have sent the said notes to her step mother Masooma. Pw1 states that she does not know when any modifications are done in the document the date of modification and time gets reflected in the system. PW1 states that the police did not ask her any questions about these notes. PW1 states that she does not remember about the inclusion or exclusion of any event while preparing the notes before filing any complaint and that she did not consult any lawyer or Women's Right activist before preparing the notes and filing of the complaint.

62. PW1 further states that she knew a few Women's Right activist at the relevant time and further states that she had consulted a lawyer before filing complaint and had made that lawyer aware of the facts of this case immediately after the incidents but she does not remember whether it was after the first or the second

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incident but she believes that it was after the first incident. PW1 states that she does not remember whether she had spoken to the lawyer by name Rebecca John between 11.11.2013 to 15.11.2013 and she is the same lawyer whom she had informed about the incident, but states that she does not remember the date and more specifically whether it was between 11.11.2013 to 15.11.2013. PW1 states that when she informed Rebecca about the incidents she asked her some details as to whether she was okay and in this context there was a discussion between them and she came to know Rebecca John professionally between 2011 to 2013. PW1 does not remember how many times she made telephone calls to her between 7.11.2013 to 15.11.2013 and she did not send her any legal advice in respect of these incidents. PW1 states that the draft of the complaint to the organization was made on the basis of her memory and notes and that she spoke to her friends and family before e-mailing the complaint to the organization. PW1 admits that she presented her version to the police for the first time on 26.11.2013 when her 161 statement was

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recorded.

63. PW1 admits that she has attended the THINK Fest 2011, 2012 and 2013 and used to always stay in Block No.7 but states that she is not well conversant with the topography of the Hotel Grand Hyatt. PW1 states that she does not remember what is the distance between the entrance of the Grand Hyatt to Block No.7. PW1 states that she visited the Grand Hyatt for the last time when the scene of offence panchanama was conducted but she does not remember how many times she entered and exited the hotel at that time. PW1 states that she was informed in the week prior to 06.11.2013 and that she would have to leave for Goa for THINK Fest and she does not remember whether this communication to her was by email. PW1 could not say anything to the suggestion that the preparation commenced two to three months prior to THINK Fest.

64. PW1 states that she does not have any problem with her memory and she never suffered from

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any sickness which has affected her memory and she has not been taking any medication for her memory. PW1 further states that she consulted a psychoanalyst Dr. Shejja Sen from Delhi. PW1 voluntarily stated that she was depressed and suicidal after she was sexually assaulted in 2013 by the accused. PW1 states that she does not remember the date or the month when she first met/went to the Psychoanalyst but it was in the year 2014 and she did not know the Psychoanalyst earlier and the clinic is near Ashlok Hospital in Delhi but she cannot state the exact address but it is South Delhi. PW1 states that she visited the said Psychoanalyst twice or thrice and the Doctor asked her the details regarding the reason for her seeking consultation with the Doctor and she do not remember whether she recorded the reasons and that there was no other person present during her visits. PW1 states that she was not prescribed any medication and she does not think that she has any documentary evidence to show that she had visited the Psychoanalyst. This fact was disclosed by PW1 for the first time in cross-examination regarding her visit to a doctor.



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65. PW1 states that she does not remember whether on the two occasions when she interacted with the IO, her statement was recorded. PW1 states that on those two occasions she had not disclosed to the IO about her visits to the Psychoanalyst and she did not disclose in her statements which were recorded by the police as they were recorded prior to her visits to the Psychoanalyst.

66. PW1 states that she prepared only one draft of her recollection of the incidents of sexual assault by the accused between 16.11.2013 to 18.11.2013 and she decided to make written complaint to her Managing Editor Shoma which was prepared by her on one day and she sent the complaint to Shoma on the morning of 18.11.2013 and she did not make any changes in the draft before sending it to Shoma as far as the facts of the sexual assault are concerned. PW1 states that she may have made changes as far as what was relevant in an official complaint and these changes were made from the date she drafted the complaint to the date she forwarded



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the complaint to Shoma and she does not remember whether she had deleted anything in the complaint to Shoma. PW1 states that she had not spoken to her lawyer about the draft complaint before forwarding it to Shoma but she had disclosed about the sexual assault by the accused to a lawyer immediately after the two incidents of sexual assaults on her by the accused. PW1 states that she does not remember whether she found any ambiguity in her draft complaint before she forwarded it to Shoma.

67. PW1 does not remember whether Ishan (PW11) had informed her that he could not download her statement and he requested her to send it to him once again and thereafter upon showing the Email dated 15th November, 2013 at 11.03 p.m. by Ishan which was marked as 'X' subject to production of Section 65 B Certificate regarding the fact that the statement could not be downloaded, PW1 admitted that the said mail was sent to her by Ishan and she received the same. PW1 states that she believed that the notes/email sent to Ishan,



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Shougat and Vishnu were copies of the same email which she had sent to her step mother stating that she had removed some ambiguity in the draft but she do not remember whether she had sent a second draft of the complaint to her step mother and she had sent her an attachment the Volume of which was 149K. PW1 states after being shown email dated 15.11.2013 sent at 15.52 hrs Vol. IV pg 571 she does not remember whether prior to the email at page no.571 vol. IV dated 15.11.2013 she had sent another email to her stepmother which was purported to be her statement. PW1 states that there may have been an email containing her statement prior to the email dated 15.11.2013 to her stepmother. PW1 states that it must have been that the ambiguity removed was from the previous statement.

68. PW1 states that she is not aware that the first disclosure about the sexual assault is of great relevance and that she does not know if it was an important fact and that she disclosed about the incident to Ishan, Shougat and Vishnu. PW1 states that Nikhil was

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present in the main lawns of the Grand Hyatt, on 7.11.2013 as soon as she and the accused made their way from Block no.7 and she intercepted Nikhil (DW4) and she immediately asked him to stand and talk to her. PW1 states that she told Nikhil Agarwal that she was scared of the accused and therefore told him that he should stand and talk to her until the accused left from there. PW1 states that she did not disclose the incident to Nikhil Agarwal at that time. When PW1 was asked whether Nikhil Agarwal was the first person she met after the incident on 7.11.2013, she answered that she did not meet Nikhil Agarwal voluntarily but he was present at the lawns. PW1 admits that the statement made in bracketed portion marked at point A to A at page 0572 of email dt. 16.11.2013 Vol. IV is correct. PW1 admits that she described the incident in the email dt.16.11.2013 at points marked at point B to B but did not inform Nikhil about the incident that the accused had sexually assaulted her in the lift at that time. PW1 admits that she did remove the incident of meeting Nikhil from her complaint to the organization for several reasons.

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However no reasons are disclosed by the victim. PW1 states that she did not discuss the monetary aspect of this complaint with anyone and that her friends did not tell that she will get a grant as a result of the complaint of being sexually assaulted by the accused. PW1 states that she does not remember what she had discussed with Ranvijay Singh and does not remember any such conversation that Ranvijay had suggested that she should get 100 crores and she does not remember if she had discussed this aspect with Aastha.

69. PW1 admits that the WhatsApp message was sent by Aastha to her on 17.11.2013 at 8.15.33p.m. Col. C no.97339 and message is 'Sab acha hoga'. PW1 admits that the WhatsApp message was sent by Aastha to her on 17.11.2013 at 8.15.42p.m. Col. C no.97340 and message is 'Aur awesome job mileage'. PW1 further admits that the WhatsApp message was sent by Aastha to her on 17.11.2013 at 8.15.47p.m. Col. C no.97341 and message is 'Milega'. PW1 admits that the WhatsApp message sent by Aastha to her on 17.11.2013 at



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8.15.55p.m. Col. C no.97342 and message is 'Aur grant milega'

70. PW1 states that while working for Tehfka at THINK festival she and all the employees were permitted to drink and she does not remember if she had a drink on 7.11.2013 and states that she was not drunk on 7.11.2013 at the THINK festival. PW1 states that she may have said in an email that she had a drink and the photograph produced also shows that there is a cup with wine in her hand. PW1 states that immediately after the first incident she informed her colleagues about what had happened and after the second incident she informed her friends as well and she wrote down her recollections almost 8 or 9 days after the incidents which is on the 15.11.2013. PW1 states that she had a clear recollection of being sexually assaulted before informing her friends about the incidents. PW1 states that she had a pretty clear recollection of the events that immediately preceded and followed by the incident of sexual assault of 7.11.2013 when she disclosed the facts to her colleagues

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on 7.11.2013. PW1 voluntarily says that she may have missed some details as a result of being in shock as she had been sexually assaulted by someone who she had trusted for many years.

71. PW1 states that the testimony emailed to Shoma was based her true recollection of facts. PW1 states that after they exited the lobby of Block 7 she was not walking with the accused but was walking in front of him until she crossed the entire side of the swimming pool and entered the main lawn area and she stood there until the accused had left. PW1 states that she was with Nikhil Agarwal till she took a taxi to go back to the International Centre and she does not think that her other colleagues were present at the lawn as she could not see them.

72. PW1 states that she knows G. Vishnu since around 2010 and when they were at the Delhi office they worked in the same office building. PW1 states that she knows Shougat Das Gupta since the time he joined

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Tehelka but she do not remember the year when he joined. PW1 states that she did not forget any portion of the incidents of 7.11.2013 and 8.11.2013 when she wrote her testimony emailed to Shoma and she was not confused about the events immediately connected to the said incidents. PW1 does not remember if she was in frequent communication with Sunaina while she was working in Mumbai and she does not remember after how many months of her joining, Shougat Das Gupta joined Tehelka office, Delhi. PW1 states that sick leave must have been granted whenever she was sick at the Tehelka office at Mumbai and Delhi. PW1 states that she knows Payal Puri since 2011 when they worked in the core team of THINK Fest 2011 together. PW1 states that she does not think that she tried to contact the sister of the accused or Payal Puri on 7.11.2013 after she was sexually assaulted and she does not know who the members of the core team were in 2013. PW1 states that she did not decide to preserve the clothes worn by her during the incidents or do anything with them, but she still had them. PW1 states that she, Shougat and G.Vishnu

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discussed everything regarding personal and professional prior to 7/11/2013.

73. PW1 does not remember the time even by approximation when she met Nikhil Agarwal on 7.11.2013 after the incident and she did not go to the room of Robert De Niro on 7.11.2013 after meeting Nikhil Agarwal and she went to the room of Robert De Niro and his daughter the next morning on 8.11.2013. Upon being asked if she was discussing her personal and professional matters and issues with Nikhil Agarwal just the way she was discussing personal and professional matters with Shougat Das Gupta, G. Vishnu and Ishan Tankha, PW1 answered that it was not the same as Nikhil and she never worked together, and she knew Nikhil through Tiya, daughter of the accused whereas with the others she worked with them and they were her friends and Ishan Tankha she knew him ever since she was in school. PW1, on being asked whether she had last conversation with Nikhil on 5/11/2013, stated that she believes that the last time Nikhil contacted her was between 16th to the 18th of

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November 2013 inviting her for his wedding at which point he did not remember that he had met her and she had told him to stand with her on the 7.11.2013 as she was afraid of the accused and after that she did not speak to him again. PW1 states that there was no reaction from Nikhil and he appeared blank and she thought that Nikhil was too high but he did stand with her at the time when she requested him to stand along with her as she was afraid of accused.

74. PW1 states that MO no.18 i.e. the magazines at Exh.262, contained articles written by her relating to rape or sexual violence on women and she after perusing the same states that they do. PW1 does not know if Block no.7 was fully occupied on 7.11.2013 and 8.11.2013. PW1 admits that an article for Tehelka Magazine dt. 30.3.2013 relating to rape titled "Age of innocence" was written by her and this was an article about the age of consent in India and the consent to sexual relations, marriage etc. but she does not remember if she had discussed about the implications of

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non consent in the article dt. 30.3.2013.

75. PW1 states that her interaction with the accused was not normal for her on the 8th, 9th and 10th November 2013 as she was sexually assaulted and she does not know how Tehelka staff perceived it. PW1 states that she went to speak to her colleagues and told them what had happened i.e. she had been sexually assaulted by the accused and also told her husband on the phone and after that she went to the room and it was passed 12o'clock and Sunaina was sleeping in the room when she reached the International Centre. PW1 states that Sunaina was her room mate and Ishan and Shougat Das Gupta were awake when she went to their room and does not remember how far her room was from their room. PW1 states that after she left block 7 on 7.11.2013 after the incident and reached the main lawn between block 7 she did not see anyone until she saw Nikhil Agarwal.

76. PW1 states that the emails handed over to the IO were printed at the same place where her 161

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statement was recorded. PW1 states that her 164 Statement was recorded by the Magistrate on oath. PW1 states that she had handed over both sets of clothes worn by her on the 7th and 8th of November 2013 to the police. PW1 states that both the sets of clothes were washed by her maid prior to handing over the clothes to the police as several days had passed. PW1, on being questioned whether it did not occur to her that washing the clothes would destroy any evidence which may exist on the clothes, said that she had not made a decision to approach the police and so she was not thinking in terms of evidence on the clothes. PW1 states that she did not know if the party at the main lawn went on after 2 a.m. and she did not meet anyone at the Grand Hyatt after she had spoken to Nikhil and she left the hotel immediately. PW1 states that she could not believe that the said incident may be repeated again by the accused as she was in shock and could not believe that it had happened to her even on that day and she was not thinking about whether the accused would assault her again. PW1 admits that the contents of the testimony



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emailed to Shoma at Exh. X-1 colly was true to her own knowledge and also the contents of her 161 statement. PW1 states that she does not remember if she had made any phone calls after leaving the company of Nikhil before reaching the Goa International Centre on 7.11.2013.

77. PW1 states that she is aware of the meaning of the word 'attempt' and admits that she had stated in her testimony/complaint emailed to Shoma on 18.11.2013 that as they made their way out of the elevator of Block 7 at the Grand Hyatt Mr. Tejpal held her arm and pulled her back into the lift. PW1 states that she may have stated in her statement u/s 161 Cr.P.C. that as they made their way out of the lobby of Block 7 on the ground floor at Grand Hyatt the accused put an arm around her shoulders and said lets go and wake up Bob but she does not remember the exact words. PW1 states that she do not remember if she had contacted the butler from the International Centre at Goa on the 8.11.2013 regarding Robert De Niro but she may have. PW1 could not say anything to the suggestion that during the time



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she was using the mobile which was seized by the police she had no WhatsApp conversation with Shougat Das Gupta and had exchanged only 200 Sms's with him and had only 10 WhatsApp messages and 124 SMS's exchanged with Ishan Tankha and only 500 WhatsApp messages and 4 SMS's exchanged with G. Vishnu, and had only 53,176 WhatsApp messages and 55 SMS's exchanged with Nikhil Agarwal.

78. PW1 admits that she had stated in the testimony/complaint made to Shoma that the accused attempted to perform oral sex on her and try to penetrate her with his fingers and that she asked him to stop and he did not listen. PW1 states that she did not elaborate in her testimony/complaint made to Shoma as to how the accused attempted to perform oral sex on her but only stated that accused attempted to perform oral sex on her and she asked him to stop and he did not listen. This statement shows that the prosecutrix did not mention the type of assault on her. To the question whether in her testimony/complaint to Shoma she stated that she pushed the accused by his shoulders as the accused was

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down on his knees and she began to look for a way to exit the lift and seeing this the accused stood up and put his fingers in her vagina, PW1 stated that the accused attempted to penetrate her with his fingers and perform oral sex on her, and that she asked him to stop but he did not listen. PW1 stated that she had stated in the complaint/testimony that the accused attempted to penetrate her vagina with his fingers and she asked him to stop and he did not listen when she was questioned whether she specifically stated in the complaint testimony that the accused put his fingers in her vagina. PW1 states that she does not remember if she has stated in the email dt. 16.11.2013 to Ishan that accused put his face between her thighs and put his tongue in her vagina for which PW1 after going through the email page no.0572 of Vol.4 X1 states that it is not so stated. PW1 states that she did not state in her emails dated 16.11.2013 to her stepmother and friends and 18.11.2013 to Shoma that the accused knew her father as the accused worked with her father in the past, i.e they worked as journalists for the magazine Outlook and

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her father and the accused were friends and she does not remember whether she has stated these facts in her 164 statement. PW1 states that she did not state in her emails, 161 statement dated 26.11.2013 and 164 statement that because it was Mr. De Niro's first night at the festival, the accused had conveyed to her that the accused wished to drop Mr. De Niro to his room to wish him goodnight along with her, which is an omission PW1 states that she had not stated in her emails to her friends, Shoma and stepmother about the daughter of the accused being close to her and that not a day passed when his daughter Tiya did not meet or speak with her, and that the family of the accused was like her family, as they all knew about it. PW1 states that she does not remember whether she had mentioned in the emails that they were still in conversations after dropping Mr. De Niro to his suite and they came out of the elevator on the ground floor of block 7.

79. PW1 states that different people were reviewing her work at Tehelka and when she joined Nisha

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Susan thereafter Aditi Saxton, Shougat Das Gupta, Ramesh Sharma and Shoma Chaudhary and very rarely the Editor-in-Chief was also reviewing her work.

80. PW1 states that her statements under sections 161 and 164 were recorded as per her say and that her statement recorded before the Magistrate contains full and true account of the incidents as disclosed by her to the Magistrate. PW1 states that several additional facts were stated by her in her 161 and 164 statements which were not stated by her in her testimony emailed to Shoma on 18/11/2013 and states that clarification made to the police and Magistrate were based on true recollection of the incidents. PW1 admits that on 15/11/2013 she had written everything down in exact order of event and sequence as she best remembered it. PW1 states that she may have in her statement to the Magistrate and police stated that she had written down everything that happened in exact order of events and sequence because she knew that this was important should she ever decide to press criminal charges. PW1



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states that she believes that the email was sent on 15/11/2013 to Ishan though the question was of email dated 16/11/2013 and the contents was the sequence of events as she best remembered. PW1 states that it is possible that the email dated 15/11/2013 which she had sent to Ishan PW11, was sent by her to Masooma, Raghu and Naresh. PW1 states that both her testimony and the attached cover letter was supposed to begin an inquiry process and she wrote the testimony on 18th of November 2013 and started drafting the contents of testimony as she has best remembered them on the 15th November 2013. PW1 states that it may be the same email X1 exhibited as exhibit 704, vol 4, page 0572 dated 16/11/2013 and she claim to have sent on the 15th November 2013.



81. PW1 states that she had sent a draft of her complaint to Ishan, Shougat and Vishnu as an attachment to an email sent to them on the 15/11/2013 and she does not remember, but she may have sent the draft of her complaint to Naresh Fernandes, Sreenivasan Jain, Raghu

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Karnad and Masooma Ranalvi on 15/11/2013 and she does not remember if she had produced the above attachment to her email dated 15/11/2013 before Investigating Officer. (The attachments to the email dated 15/11/2013 are not produced). PW1 admits that if she did not remember any facts she would not be able to state the same before the police and the Magistrate. PW1 states that she recollected certain details and certain details were clear to her on 28/11/2013 during the scene of offence panchanama which she had stated in the panchanama as well as in her examination in chief. PW1 states that she told Ishan, Shougat and Vishnu on the night of 7/11/2013 that the accused had taken her into the lift with the excuse of having to go and wake up Mr. De Niro and then sexually assaulted her inside the lift. PW1 states that the lift doors did not open for about 5 to 7 times during the two minutes when she was allegedly sexually assaulted on the night of 7/11/2013. PW1 states that she cannot recall the number of times she tried to get the door to open and could not understand why the door could not open while the accused forcibly



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kissed her, penetrated her vagina with his tongue and fingers and she repeatedly asked him to stop and open the door. PW1 states that she cannot recall if the lift was in motion during the two minutes of the alleged sexual assault on 7/11/2013 and states that she only knows that the doors would not open while she was being assaulted which is why she thought that the lift was in motion. PW1 states that it is possible that she may have stated that during the scene of offence panchanama she was sexually assaulted in a moving the lift. PW1 states that it is possible but she does not remember that there are two indicators inside the lift on either side. PW1 states that she does not remember if the chime was ringing in the lifts of block 7 every time the lift would reach a particular floor and she cannot state how many times the lift went up and down during the two minutes of the alleged sexual assault on 7/11/2013.

82. PW1 states that she cannot recall at what point of time and sequence she tried to exit the lift for the first time and also she cannot recall how many times accused pressed the buttons on the lift panel as she can

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only recall what he was doing to her body and that the doors would not open. PW1 further states that if the lift doors had opened five to seven times during those two minutes, she would have exited the lift on 7/11/2013. PW1 states that on 7/11/2013 the accused took her into the lift by holding her arm and she believed that she was pushed up against the left side of the lift while the accused sexually assaulted her. PW1 states that she was at the same spot as she was frozen in fear while she was sexually assaulted. PW1 states that the only time she moved around in the lift were when she was entering and exiting the lift and apart from this her motion in those two minutes in the lift was trying to push the accused away and after the assault adjusting her clothes and tying up her hair. PW1 states that while she was in the lift in those two minutes she reached towards panel of the lift to figure out why the lift door was not opening and she does not remember how many times she reached out to the lift panel. PW1 admits that before the arrival of Robert De Niro she had made a recce of the route from the reception of the Grand Hyatt till the suite of Robert De Niro. PW1



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states that she does not remember whether she had personally operated the lift in block 7 prior to the incident of 07.11.2013 but she may have and further states that when she used the lift she was usually accompanied by a member of the Grand Hyatt staff. PW1 does not remember the number of times she used the lift prior to the incident of 07.11.2013 and she do not know whether the operation of both the lifts of block 7 were identical or not and she does not recall whether she had the occasion to use the staircase of block 7 prior to the incident of 07.11.2013. PW1 states that she tried as far as possible not to be alone with the accused after the said incident as a measure. PW1 states that she does not remember the exact time but she states that she was summoned by Robert De Niro and his daughter to their suite. PW1 further states that she was not alone in the suite as a member of the Grand Hyatt was also summoned by Robert De Niro and his daughter to serve them drinks and she stayed in their suite till she finished her work with them and she does not remember whether there was anyone accompanying her when she left the said suite.

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PW1 states that she does not remember the timings but she may have gone to their suite on the said intervening night of 09.11.2013 as she was incharge of chaperoning Robert De Niro and his daughter and she does not remember if she was alone on the said intervening night of 09.11.2013 and 10.11.2013 at 11.30 p.m. and left at 12.04 a.m. PW1 states that she does not remember whether she had requested anyone to accompany her to the suite of Robert De Niro on the intervening night of 09.11.2013 and 10.11.2013. PW1 admits that she had been to block 7 and used the lifts several times in the said block after the incident during day and night. PW1 admits that she had removed ambiguities which she had made in the draft complaint on 15.11.2013 and emailed the said draft to her step mother and she does not remember the ambiguities which she removed. PW1 states that she does not remember the time when she reached Goa on 06.11.2013 and admits that on the night of 06.11.2013 she did not stay at the Goa International Centre and stayed somewhere near Ashvem, Morjim.



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83. PW1 states that she came to know about the existence of the CCTV footage of block 7 of Grand Hyatt for the first time on 28.11.2013. PW1 states that the scene of offence panchanama was read over to the panchas and during the scene of offence panchanama they entered at least two lifts in block 7. PW1 further states that due to lapse of time she does not remember how many lifts there were in the lobby of block 7 at the relevant time. PW1 states that during the scene of offence panchanama she pointed out the spots where she was sexually assaulted by the accused and she does not remember how many times they went up and down in the left hand and right hand side lifts during the panchanama. PW1 states that the police operated the lifts during the scene of offence panchanama. PW1 states that during the scene of offence panchanama, a member/staff of the Grand Hyatt was present and he was telling the police how the lifts are operated and she did not point out the exact spot in the lifts where she was standing when she was sexually assaulted but she adds and states that she only showed the lifts as a whole as the places where she



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was sexually assaulted by the accused. PW1 states that she does not remember whether the functioning and operation of all the buttons on the panels of both the lifts were checked by the police during the scene of offence panchanama. PW1 then states that the police verified that the doors could be prevented from opening at any floor by pressing a certain button on the panel of the respective lifts but she cannot say whether they verified the lifts could be kept in circuit without such opening by pressing the buttons on the panel during the scene of offence panchanama. When PW1 was asked if it would be true that for her to have realised that the lift was in motion, she would either have experienced weightiness or weightlessness during the up/down movement of the lifts or she would have seen the up/down direction indicator in the lift or she would have heard the chime of the lifts or she would have seen the lifts doors opening automatically at any floor, PW1 stated that under normal circumstances this would have been true but these were not normal circumstances as she was being sexually assaulted inside the lifts which left her completely



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traumatized and disoriented. PW1 states that she tried to stop the lift by repeatedly asking the accused to open the lift and she could not physically open the lift because she did not know how the doors were not opening and further she was pushed up against the side of the lift by the accused while he was sexually assaulting her on 7.11.2013 during the incident. PW1 states that she saw the hand of the accused on the lift panel after which the doors did not open until the accused had finished sexually assaulting her. PW1 states that she saw the hand of the accused on the lift panel and he was simply pressing the buttons of the lift panel. PW1 admits that in her attachment titled "testimony" which was sent to Shoma Chaudhary with her email on 18.11.2013 and in her email to Ishan (PW11) on 16.11.2013 she stated "I then realized that Mr. Tejpal was simply pressing buttons on the lift's panel to make the elevator stay in circuit, preventing it from stopping anywhere, and for the doors to open". PW1 states that she does not remember if she told the panchas during the scene of offence panchanama that the accused was simply pressing buttons on the lift's



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panel to make the elevator stay in circuit, preventing it from stopping anywhere, and for the doors to open.

84. When PW1 was asked whether it happened that the lift stopped as the hands of the accused were on her shoulders and the accused could not press the button for yet another floor to keep it in circuit, PW1 answered that the lift stopped after the accused had penetrated her with his fingers and from that point she did not know where his hands were as she was in a state of complete shock. PW1 states that she had mistakenly stated in her attachment titled "testimony" which was sent to Shoma Chaudhary with her email on 18.11.2013 that "the lift stopped on the ground floor as Mr. Tejpal's hands were on me and could not press the button for yet another floor to keep it in circuit". PW1 states that Persis Sidhwa did not guide her to give her statement to the police as well as to the Magistrate and her statement under Section 161 Cr.PC was recorded in the morning but she does not remember the exact time. PW1 further states that Persis Sidhwa was not in contact with her prior to the recording of her



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statement under Section 161 Cr.PC and she does not recollect whether Persis Sidhwa sent her an SMS message that in her statement to the Magistrate under Section 164 of Cr.PC she should include that she was sexually assaulted in two different lifts. PW1 states that she had stated during the scene of offence panchanama that the lift was in motion and the doors were closed when she was sexually assaulted on 07.11.2013 and she did not walk with the accused to a little after Capiz bar from block 7 after exiting the lift after the incident on 07.11.2013. PW1 states that she does not remember if she has stated during the scene of offence panchanama to the police and panchas that from the lift till a little after Capiz bar Tarun Tejpal was accompanying her on 07.11.2013.

85. PW1 states that she was knowing a person by name Danny, however, she does not recollect since when she knew him and that she is not aware of the nationality of Danny and she does not know whether Danny was in Goa from 6.11.2013 to 11.11.2013. PW1 states that on 7.11.2013 after she came out of the lift



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after coming down to the ground floor from the second floor the accused pulled her back in the lift and that she had no conversation with the accused at that time. PW1 states that on 07.11.2013, the accused touched one panel of the lift during the incident and she does not recollect which button on the lift panel the accused touched first on 07.11.2013 after entering the lift on 07.11.2013 before the incident. PW1 states that she does not recollect when she saw the accused touching the button panel of the lift for the last time on 07.11.2013. PW1 states that she does not recollect which hand was used by the accused to touch the lift panel on 07.11.2013 during the incident and when the incident took place, the lights of the lift were on when they entered and exited in the lift and she is not aware if the lights inside the lift reflects outside the lift on the floor when the door is open. PW1 states that throughout the incident on 07.11.2013, she was facing the same side and she physically resisted the accused with all her force while she was being sexually assaulted and when she pushed the accused on his shoulder, the accused did not fall as he was on his knees. PW1 states



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that after adjusting her clothes and tying up her hair she followed the accused out of the lift and admits that there was no tearing of her clothes or underwear during the incident of 07.11.2013. PW1 states that after she exited the lift on the second floor after the incident, she was walking behind the accused and not following him, which is also clear from the CCTV Footage. PW1 states that she does not recollect if there are two staircases on the second floor to come on the first floor and she walked same staircase from where the accused moved to the first floor on 07.11.2013. PW1 states that she was in complete shock and trauma, and she does not recollect the distance between her and the accused when she exited the lift on second floor on 07.11.2013 and also does not recollect the distance between her and the accused when they reached the lobby on the ground floor on 07.11.2013. PW1 states that during the incident on 07.11.2013, she did not sit or squat in the lift. PW1 states that apart from the places mentioned by her in the chief that the accused touched her, no other place the accused had touched on her body.



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86. PW1 stated that she did not scream in the lift on 07.11.2013 but voluntarily added that she repeatedly begged with the accused to stop assaulting her and to open the lift. PW1 states that when the accused was on his knees his hands were not on the lift button panel. PW1 states that she does not recollect how many hands the accused used to lift her dress on 07.11.2013 during the incident and states that the accused used both his hands to pull her underwear down and that the accused caught her underwear on both sides of her waist and pulled her underwear down. PW1 states that the accused was not holding her hands when the accused was pulling the underwear down. PW1 states that apart from the accused catching hold of her hand and pulling her inside the lift and inside the lift touching both her shoulders, the accused did not hold her hands in any other way during the incident in the lift on 07.11.2013. PW1 states that she does not recollect if she moved or lowered her chin when she was being sexually assaulted.



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87. PW1 states that even after the divorce with her mother, her father was giving her love and affection and did not desert her at any point of time. PW1 states that Sr. Advocate Rebecca John was not her mother's lawyer. PW1 states that she does not recollect if she was chatting on WhatsApp with Bikki with respect to Danny and also does not recollect if she had chatted with Aman about Danny and her husband Aman was aware that she had a friend by name Danny. PW1 states that the dress worn by her on 07.11.2013 during the incident was of chiffon material and she was wearing lining under the chiffon dress and under that she was wearing her underwear. PW1 states that the lining under the chiffon dress is not till the knees, but above her knees and she does not recollect how much above the knees the lining was and that underwear which she wore at the time of incident on 07.11.2013 was a thong. PW1 admits she had not received any physical injury out of the incident that took place on 07.11.2013 and she is not aware if the accused had received any injuries on 07.11.2013 due to the incident. PW1 states that the accused had put two



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fingers in her vagina and she had not received any injuries but the insertion of fingers in her vagina was very painful and aggressive.

88. PW1 states that she does not recall if she was a group Admin of a whatsapp group named "woof, wag & wiggle" and she does not recollect any whatsapp group of the said name. PW1 after being shown Exh.681(1) states that it appears to be so, but she does not recollect. PW1 states that she does not recollect the time when she left for Ashwem on the evening of 10/11/2013 and does not remember the time when she returned back to Panaji from Ashwem, but she returned back on the night of 10/11/2013 and went to Ashwem Beach on 11th morning from Panaji but does not remember the time even by approximation when she reached Ashwem from Panaji on 11/11/2013. PW1 admits that the person seen in the photograph (exhibit 681(1) annexure page 11) is of her and Danny. PW1 states that it may be true that her mobile location is shown at Morjim at 22.37 hours on 10/11/2013, as per



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the call detail records produced by the prosecution. PW1 states that it may be true that her mobile location is shown at Morjim at 5.14 hours of 11/11/2013 as per the call detail records produced by the prosecution.

89. PW1 states on 7/11/2013 during the incident she pushed the accused as hard as she could. PW1 states that she did not catch her underwear as the accused was pulling it down and she did not scratch the accused anywhere during the incident on 7/11/2013 and she held the slip of her dress to hold it down when the accused was trying to lift her dress and she does not recall if the hat of the accused was on his head throughout the incident. PW1 further states that the distance between her and the accused when she pushed the accused for the first time on 7/11/2013 during the incident and also during the second incident the accused was extremely close to her in her personal space and blocking her way. PW1 states that she did not slap the accused during the incident in the lift on 7/11/2013 as he was physically taller and stronger than her and also he



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was not just her boss but also her father's friend and her best friend's father and at the time she thought that if she hurt him, the accused would beat her up and hurt her even worse. PW1 states that right after the accused pushed her against the lift the accused began forcibly kissing her and at this time she tried to push him. PW1 states that she does not recollect the time when she and the accused were in conversation after dropping Robert De Niro and also the time after she exited the lift after the incident on 7/11/2013. PW1 further states that she was not wearing a watch on the day of 7/11/2013 during the incident and she was not looking at her mobile phone to keep the count of time while she was being sexually assaulted and she does not recollect now if she had looked at her mobile to look at the time after the incident on 7/11/2013. PW1 further states that she had given 10:20pm as the time she was in the conversation with the accused on 7/11/2013 in her examination in chief and states that it may be that she remembered the time then but she does not remember the time now. PW1 states that she remembered the time as 10:30pm which is

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stated by her in her 164 statement before the Magistrate when they exited the lift on 7/11/2013. PW1 states that her feet were on the ground and her legs were standing, when the accused was bringing his face close to her groin on 7/11/2013. PW1 states that she twisted and turned her body away from the accused when the accused brought his face towards her on 7/11/2013. To the question whether she raised her voice during the incident on 7.11.2013 in the lift, PW1 stated that she does not remember the volume of her voice but she was repeatedly begging the accused to stop assaulting her and to open the doors of the lift. PW1 states that she only remembers that only after the lift doors opened that she was able to pull her underwear up. PW1 states that she did not try to bang the lift walls during the incident to dissuade the accused from assaulting her. PW1 states that she does not recall any voice on the intercom while she was being sexually assaulted on 7/11/2013. PW1 states that the phone attached by the police is the Samsung Galaxy phone. PW1 states that she did not verify after 7/11/2013 when she went to the lift of block 7



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how the doors could be kept closed for about two minutes. PW1 states that in the testimony she made the statement that the lift was in circuit and as a lay person her experience was that when the lift stops at a floor the doors open and since the doors did not open the entire time she was being sexually assaulted she felt that the lift must have been in motion. PW1 states that she does not know if she was trying to state that the lift was not in motion on 7/11/2013 during the incident but she just knows that the doors of the lift would not open while she was being sexually assaulted. PW1 states that she did not bend down to pull her underwear up when the hands of the accused were on her shoulders on 7/11/2013 during the incident. PW1 states that she did not try to cover her vagina with her hands when she saw the accused bringing his face close to it on 7/11/2013 during the incident as she did not imagine that he would do something so disgusting. PW1 states that she might have touched the head of accused to prevent him from inserting his tongue inside her vagina on 7/11/2013 during the incident but she does not recall.



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90. PW1 states that she has been doing yoga since college on and off and she does not remember the exact year when she began practicing. PW1 states that she did not move her face to any side before accused advanced toward her to kiss her on 7/11/2013 during the incident. PW1 does not recollect when she came to know for the first time that the accused and she were in the lift for about two minutes during the incident of 7/11/2013 and she admits after being confronted with her police statement that she had stated to the police that she and the accused were in the lift for two minutes on 7/11/2013 during the incident. (volume II, page 0028). PW1 states that she does not recall how she measured the time of two minutes of the incident of 7/11/2013 and she does not remember how she knew at the time of recording her statement before police that the time was 10:20pm when the accused and she were in the conversation after they left the suite of Robert De Niro of 7/11/2013. PW1 states that she may have remembered the time then, when her statement was recorded before the Magistrate that



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accused and she exited the lift before the incident at 10:30pm. PW1 states that she does not recall how she came to know that it was 10:30pm when she and accused exited the lift on 7/11/2013 before the incident, to state so before the Magistrate. PW1 does not remember if thighs of the accused were perpendicular to the floor or diagonal that is she does not remember if the accused was sitting up or sitting on his calves during the time the accused was on his knees during the incident of 7/11/2013. PW1 does not remember when she came to know for the first time that she and the accused were inside the lift during the incident for two minutes on 7/11/2013.

91. PW1 states that when the accused first advanced towards her, she did not think he would sexually abuse her and after he had physically violated her she did not imagine that he would do so again so she did not think it was necessary to threaten him saying that she would tell Triya and Geeta. PW1 states that she had not given any warning to the accused that she would tell



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his wife and daughter when the accused used his authority to call her in the lift on 8/11/2013 and she told him what he was doing was not right and that she had lunch with Geetan that day. PW1 state that she did not chaperone Bob Geldof during THINK 2012. PW1 states that after dropping Robert De Niro on the night of 7/11/2013 the accused and she reached just outside the lobby before the accused pulled her back into the lobby and the lift. PW1 states that she does not remember the duration of their conversation if it was for about 5 minutes outside the lobby of block no 7 on 7/11/2013 and states that they were in conversation continuously since they left the suite of Mr De Niro and his daughter and were still talking on the ground floor outside the lobby of block 7 when the accused pulled her back in the lift. PW1 states that it is possible but she does not remember the duration that the accused and she were for about 5 minutes outside the lobby of block 7 on the night of 7/11/2013 after exiting the lift after dropping Robert De Niro. PW1 states that she was not sitting in any golf buggy when she was talking to the accused outside block 7 on 7/11/2013



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before the incident and she does not remember if the accused was sitting in the golf buggy when she was talking to the accused outside block 7 before the incident after dropping Robert De Niro on 7/11/2013. PW1 states that she does not remember if the butler Sandeep passed them when they were in a conversation outside block 7 before the incident after dropping Robert De Niro on 7/11/2013. PW1 states that when they were in a conversation outside block 7 before the incident after dropping Robert De Niro on 7/11/2013, the accused asked her about Bob Geldof, Aman, step mother, father, work and many other things. To the question if the accused had any conversation with her having sexual overtones prior to THINK 2013, PW1 answered in the affirmative and stated that the accused was in the habit of making sexually coloured remarks to female employees at Tehelka including her; however they were told to treat it as a joke by Shoma Chaudhary. PW1 states that she does not remember if she had specifically mentioned the location or the phrase "outside block 7" but she has consistently said that they were in conversation as they

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exited block 7. PW1 states that she did not disclose in her email to Ishan dated 16/11/2013, her testimony dated 18/11/2013, her police statement and her statement to the Magistrate that she was in conversation with the accused outside block 7 on 7/11/2013 after dropping Robert De Niro and before the incident.

92. PW1 states that after 28/11/2013 her supplementary statements were recorded by the police at least three times but she does not remember the dates or the exact number of statements. PW1 states that Sunaina and she were not really friends but they were colleagues as they both worked for Tehelka in Mumbai. PW1 states that she does not remember if Sunaina was awake in their room at Goa International Center on the morning of 08/11/2013 when she left. PW1 states that she does not remember if Sunaina was awake in their room on the morning of 9/11/2013 when she was in the room and does not remember who left the room first on the morning of 9/11/2013. PW1 states that it did not cross her mind on 7.11.2013 that she would lose her job



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if she resisted the accused during the incidents and voluntarily state that while she was being assaulted for the first time the primary thought on her mind was how to protect her body and at that time she thought that if she resisted the accused would beat her or hurt her even more and it only struck in later that she would probably lose her job for having resisted him. PW1 states that she does not remember the exact time, she realized that she would probably lose her job because she resisted him, but it was soon after they exited the elevator. PW1 states that the exact words are not stated in the scene of offence panchanama, that she could not rush out of the lift because her movement was hampered by the fact that her underwear was at her ankles and further states that in the panchanama on page 12 they have framed in different wordings where she has stated that she had to make her clothes proper which is also shown in the CCTV footage that she is adjusting her clothes as she came out from the lift.



93. PW1 admits that in the email attachment

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titled "testimony" at page 0048 of volume II to Shoma, she stated that as soon as the doors were opened, she picked up her underwear and began walking out of the elevator rapidly and that the accused was still following her. PW1 admits that in her statement to the police state that "as soon as the doors were opened, she pulled up her underwear and began walking out of the elevator rapidly and that the accused was still following her asking her what the matter was. PW1 admits that she has stated in her statement to the Magistrate (exhibit 265), "just as the lift opened on the ground floor of block 7, I pulled up my panties and walked hurriedly out of the lift blinking back tears. Mr. Tejpal was walking behind me and kept asking what the matter was".

94. PW1 admits that the photograph which is marked "A" in the evidence of PW15 she and Harsimran Gill (bikki) are seen in the photograph, but she does not recollect if the photograph was clicked in the year 2015 at Pune. PW1 does not recollect if at the time of attachment panchanama of her mobile, whether the

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conversation between her and Shoma recorded on her phone, and was played before the panchas and she states that the conversation between her and Shoma recorded on her phone was played before the panchas during the panchanama when the transcript was compared with the voice recording and she do not recollect whether her voice sample was taken at any time during the investigation and that she used the app "call Recorder" to record the conversation between her and Shoma on her phone. PW1 states that she does not remember if she had stated in her email to Ishan dated 16.11.2013 that she was pushed up against the side of the lift on 07.11.2013 during the incident. PW1 upon confrontation admits that it is not stated in the email attachment named Testimony dated 18.11.2013 that she was pushed up against the side of the lift on 07.11.2013 during the incident. PW1 admits that it is not recorded in her statement dated 26.11.2013, to the police, that she was pushed up against the side of the lift on 07.11.2013 during the incident. PW1 admits that it is not recorded in her statement to the Magistrate at page 0151-II dated



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27.11.2013 that she was pushed up against the side of the lift on 07.11.2013 during the incident. PW1 state that it is not specifically recorded in her email attachment named Testimony dated 18.11.2013 that the accused had put his tongue in her mouth at (pg 0047 of Volume II). PW1 states that it is not specifically recorded in her attachment named Testimony dated 18.11.2013 that at one point she noticed that the accused had his hand on the panel of the lift at (pg 0047 volume II). PW1 states that it is not specifically stated in her email attachment named Testimony dated 18.11.2013, whether she had stated that her underwear was pulled down to her ankles.

95. PW1 states that she constantly struggled and begged with the accused to stop as the accused was lifting her dress. PW1 states that she resisted the actions of the accused when he began to lift her dress during the incident of 07.11.2013. PW1 states her height is 5ft 2 ½ inches. PW1 states that she had not mentioned in her supplementary statements, that she rushed out of the lift first, but infact she could not rush out first because



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her movement was hampered by the fact that her underwear was at her ankles, her dress was lifted up and she was in a disheveled state, and could not have rushed out, in such a state into a public area, however she states that this fact was stated by her in the scene of offence panchanama when she was taken to the scene of offence after seeing the CCTV footage. PW1 states that she has not stated in her supplementary statement that as they came down from second floor via the stairs, "It is alright to be in love with more than one person" and "well this is the easiest way for you to keep your job", however she says that whatever was stated to her by the accused, she has stated in all her statements to Police, Magistrate etc. PW1 states that she had not stated in her supplementary statements that on 08.11.2013 she had mistakenly believed that the accused held her by the arm and took her into the lift when in fact the accused had done this on the first day. PW1 states that on 08.11.2013, the accused had merely used his authority over her as her Boss to ask her to accompany him by saying "Bob needs something



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from his room". PW1 has not stated in her supplementary statements that at the time they entered the lift the accused was also in conversation with his guest and friend, photographer Rohit Chawla and she also did not state in her supplementary statements that on this day as they emerged from the lift on the second floor, she had already been sexually assaulted twice and was in state of blind panic. PW1 states that had she been thinking clearly, she would never have followed the accused back into the lift on the second floor, but she was not thinking clearly at that time. PW1 states that besides blind panic, the other reasons for running back into the lift on the second floor during the incident of 08.11.2013 was that on that night she had been sexually assaulted for the second time by a person whom she had trusted and admired for many years, who was her boss as well as her friend's father, and she was emotionally completely shattered and further she had barely slept from anxiety and had been working on her feet all day and given the circumstances, it was impossible for her to make a rational decision at that



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time when she was assaulted just seconds before. PW1 admits that it is stated in the scene of offence panchanama and recorded at page 13 of the scene of offence panchanama that "victim came out of the lift saying that she wanted to take the staircase to go down to ground floor and Mr. Tejpal assured her that he would not touch again and the lift was faster as such she went back in the lift". The prosecutrix has made inconsistent statements.

96. PW1 states that she does not recollect whether she stated in her supplementary statements and the scene of offence panchanama that she ran back into the lift because she was in blind panic on that night, she had been sexually assaulted for the second time by a person whom she had trusted and admired for many years, who was her boss as well as her friend's father, she was emotionally completely shattered and further she had barely slept from anxiety and had been working on her feet all day and that given the circumstances, it



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was impossible for her to make a rational decision at that time when she was assaulted just seconds before. PW1 states that she does not know if the height of the accused is about 6 feet. PW1 states that she did not push the accused when he was removing her underwear during the incident of 07.11.2013 and states that at that time she did not know what disgusting act he was going to perform on her and as soon as the accused penetrated her vagina with his tongue she pushed the accused by his shoulders. PW1 states that she did not try to kick the accused during the incident of 07.11.2013 in her state of hysteria and voluntarily says that at the time she was afraid that if she did so, the accused would beat her or hurt her in worse ways. PW1 states that she does not know how long the accused and she were in the lift during the incident of 08.11.2013. PW1 states that when he kissed her during the incident of 08.11.2013 she pushed him. PW1 states that she did not try to open the lift after the accused kissed her during the incident of 08.11.2013. PW1 states that she does not remember which side of the lift he was standing during the incident of 8.11.2013



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before the accused kissed her. PW1 states that she does not remember whether the accused lifted her dress on 08.11.2013 when the lift was going from the ground floor to the second floor or coming down from the second floor.

97. PW1 has denied that she has made false statements in her email attachment titled testimony dated 18.11.2013, in her police statement and in her 164 statement to the Magistrate that as the doors opened, she pulled up her underwear and hurriedly and rapidly she walked out of the lift and that the accused was following her during the incident of 07.11.2013. PW1 states that she did not do anything when she saw the accused advancing towards her for the first time during the incident on 08.11.2013 and voluntarily states that she did not think that the accused would assault her yet again, but within seconds he did so. PW1 states that she did not push the accused and run out of the lift after the incident of 7.11.2013. PW1 admits that she stated in the email attachment titled testimony at page 0048 "this was the extent he managed to penetrate me before I pushed



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him and ran out of the lift". PW1 states that in her email attachment titled Testimony that after the accused penetrated her with his fingers, she pushed him and ran out of the lift. PW1 admits that she did not cross her legs when the accused began lifting her dress on 07.11.2013 during the incident and voluntarily states that she was frozen in fear, she did not expect a man twice her age who is married and the father of her close friend as well as her boss to sexually assault her when for many years, she had been treated like a member of the family. PW1 states that her legs were close to each other when the accused lifted her dress on 07.11.2013 during the incident. Pw1 states that she does not recollect if she had seen the accused for the first time pressing the buttons in the lift during the incident of 07.11.2013 before or after he kissed her. PW1 states that she did not turn her back to the accused when the accused began lifting her dress on 07.11.2013 during the incident but voluntarily states that she was afraid of doing so and if she was facing him, she could at least see what he was doing to her body and try to protect herself and it was not instinctive to turn her



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back to him when she was afraid. PW1 states that during the incident of 07.11.2013, while she was being sexually assaulted she was not holding her dress or the slip of her dress, the accused had pulled it up and as the dress and the lining were together and were tight fitting they stayed up while she was being assaulted. PW1 states that she was not keeping pace with the accused after they walked out of the lift on 07.11.2013 after the incident. PW1 states that she does not recollect whether she lifted or raised her legs at any point of time during the incident of 07.11.2013.

98. PW1 states that she had a flight ticket booked for her to go to Mumbai on 10.11.2013 and she was to accompany Mr. De Niro and his daughter Drena De Niro to Mumbai and see them off later that day from Mumbai Airport as part of her duty and she does not recollect whether she was supposed to write an article on Robert De Niro as part of her professional duty. PW1 states that she does not remember what time she reached Goa International Centre after the

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incident on the night of 07.11.2013 and for how long she was in the room shared by Mr. Ishan Shougat and Ajachi and do not recollect if her phone battery ran out when she was in their room. PW1 states that she also does not recollect whether she had put her phone for charging when she was in their room and do not recollect how long after Shougat entered the balcony Vishnu came into the balcony and also do not recollect when she called Aman, her husband whether it was before or after the accused messaged her "the finger tips". PW1 also states that she does not recollect clearly where she met Vishnu on the night of 07.11.2013 after the incident at the Goa International Centre, but she thinks it was in the corridor and do not recollect whether Vishnu was alone in the corridor and do not remember when she left the room of Ishan, Shougat and Ajachi, but it was very late. PW1 also states that she does not remember if Vishnu, Shougat and Ishan were in that same room when she left the room and does not remember if Ajachi was awake, but Ishan and Shougat certainly were awake and



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voluntarily says that she does not remember if Vishnu was in the room and also does not remember whether she asked for Ishan's phone to talk to Aman in the balcony or in the room and Ajachi opened the door for her to enter the room shared by him with Shougat and Ishan and she entered the room alone when Ajachi opened the door.

99. PW1 states that on 08.11.2013 after the second incident, she met Ishan for the first time as soon as she ran out of the lift in the grand club lounge and does not recollect her exact words when she described the sexual assault to Ishan the second time, but she told him that the accused had sexually assaulted her in the lift again. PW1 states that she did not tell Ishan how the accused had sexually assaulted her and voluntarily states that she told Ishan that the accused sexually assaulted her again and do not recollect whether Ishan was standing inside the Grand Club Lounge or outside it. PW1 states that she does not recollect whether she called Ishan out of the lounge before she met him and whether



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Ishan was alone when she saw him for the first time on the night of 08.11.2013 after the incident. PW1 states that after she parted company with Ishan, she had to accompany the De Niro's to their suite so that they could get dressed for dinner and after Mr. De Niro and his daughter had dressed for dinner, she and the Butler accompanied them to the dinner area in the lawns. PW1 states that she does not recollect if after meeting Ishan on 08.11.2013 after the incident, she entered the lounge area of block 7. PW1 states that on 08.11.2013 there was a VIP party happening in the Grand Club which was the lounge area of block 7 and she was briefly present at this VIP party and voluntarily states that this was because of her duty to chaperone Mr. De Niro and his daughter during their stay in Goa. PW1 states that she does not recollect for how long she was present at the party and she met Shoma Chaudhary during this party for a brief moment when she conveyed to her that she should take Mr. De Niro and his daughter to the beach the next day, "get into the waves and get the vibe of the place". PW1 states that she does not recollect whether she was



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drinking alcohol at this VIP party and she does not recollect whether she was drinking any beverage while she was talking to Shoma and she did not express any discomfort to Shoma when she met her. PW1 states that this was an extremely public place full of high profile people and she could not begin describing to her the horrors that she had faced at the hands of the accused who was someone not just close to her professionally, but also in an intimate personal relationship with her. Pw1 states that Shougat, Ishan and Vishnu did not tell her that the accused was in an intimate personal relationship with Shoma and voluntarily stated that this was known to the entire Organisation, the Journalistic fraternity and also had been confided to her by the accused's daughter Tiya. Pw1 states that on 07.11.2013, she did not tell Ishan, Shougat and Vishnu about the intimate relationship between the accused and Shoma as this was already known to all of them, which is contrary to their deposition. PW1 states that when she met Ishan on the night of 08.11.2013, after the incident, she did not ask him to wait for her to accompany her back to the Goa



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International Centre and states that she could not do so as they were both on duty and had different things to do as per their duties at the venue and she did not tell Vishnu or Shougat on the night of 08.11.2013 to wait for her or accompany her back to the Goa International Centre and states that she could not do so as they were all on duty and had different things to do as per their duties at the venue. PW1 states that she had clear recollection of the incident of 08.11.2013 when she informed her colleagues about it on 08.11.2013. PW1 states that she does not recollect all the details of the incident of 07.11.2013 told to her colleagues. PW1 states that it is stated in the email attachment titled Testimony that "Mr.Tejpgal lifted my dress up, went down on his knees and pulled my underwear down. He attempted to perform oral sex on me as I continued to struggle and hysterically asked him to stop. At that moment, he began to try and penetrate me with his fingers, and I became scared and pushed him hard and asked him to stop the lift. He would not listen". PW1 states that she does not recollect if she had stated that the accused kept the lift in



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circuit during the incident of 07.11.2013 but states that she does not recollect if she verbally told them. PW1 states that after entering the lift on 07.11.2013 and after the doors closed, the lift doors opened for the first time on the second floor when she and the accused exited the lift. PW1 states that she does not know if the lifts of block 7 would take maximum 20 seconds to reach the second floor from the ground floor. PW1 states that the police had verified during the scene of offence panchanama that the lift could be kept stationery and she does not remember how it was verified.

100. PW1 states that she had handed over some emails to the police during her supplementary statement. PW1 was showed the emails marked as X-1 to X-3, X-5 to X-17 pg. 0046 to 0059, 0061 to 0077 of Vol. 2 and she stated that the emails were printed on 22.11.2013 except emails marked X-4 and X-18 (pg 0060, 0078 to 0080 of Vol.2) which were printed on 26.11.2013 and Exh.X-20 colly pg. 0105 to 0111 of Vol. 2 do not have the date of print printed on the said print



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outs. PW1 states that she does not recollect whether the recorded conversations between her and Shoma were played at anytime through her phone in her presence before the police during the investigation. The pancha to the panchanama states that the conversation was not played. PW1 states that she believes that she confronted the accused for the first time about the sexual assault when she was at the beach on 9.11.2013 via text messages. PW1 admits that the WhatsApp chat with the accused on 9.11.2013 contained in CD-III, were the three messages and there are no other messages on WhatsApp exchanged between her and the accused on 9.11.2013 regarding the sexual assault. PW1 admits that the two messages exchanged between her and the accused on 9.11.2013 (rear page of 2528 of Vol. XII) were relating to the sexual assault. PW1 admits that the first SMS of 9.11.2013 was "why what's happened?" and the second SMS was "I can't believe u went and mentioned even the smallest thing to her. What an absence of any understanding of a parent-child relationship" PW1 states that in her WhatsApp and SMS



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messages put down in writing to the accused on 9.11.2013 she did not claim that the accused had sexually assaulted her. PW1 states that on 8.11.2013 any people known to her were present at a distance at the time when the accused lashed out at her but she does not remember their individual names. PW1 states that she cannot point out a message in the SMS's in Vol XII which are shown to her sent by the accused on 9.11.2013 in which the accused admits to having sexually assaulted her on 7th or 8th, however she voluntarily states that in his message on 9.11.2013 at 11.52.08a.m. where he says "I can't believe U went and mentioned even the smallest thing to her. What an absence of any understanding of a parent-child relationship", the accused is referring to the assault as "the smallest thing". In the WhatsApp messages shown from 9.11.2013 the message in which the accused says "Hope u told tee it was nothing but drunken banter ?" she says that "it" in the message by the accused refers to sexual assault and that the above WhatsApp message of the accused of 9.11.2013 does not refer to drunken banter but to sexual



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assault. PW1 states that the accused has not told her that he is referring to the sexual assault when he calls it the smallest thing, the victim voluntarily states that she knew this because in every communication the accused tried to minimize what he had done and to intimidate her from describing the full extent and that she knew and understood what the accused meant. PW1 states that on the 9.11.2013 the accused tried to minimize what he had done by saying "I hope you told Tee that it was just drunken banter" and intimidate me by saying that "I had no understanding of parent child relationship" and by describing the assault as "the smallest thing". PW1 further stated that then again on 16.11.2013 the accused tried to minimize the assault by describing it as drunken banter and saying that he had treated her all these years as one of his best kids and that he would not deny any of this to Tiya, the accused also said that he had not been this saddened in the longest time to convey to her his displeasure at the fact that she would not stay silent. PW1 states that the accused did not admit to have committed sexual assault on her either on 7.11.2013 or



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8.11.2013 in the WhatsApp messages and SMS message sent by the accused to her on 16.11.2013.

101. PW1 admits that in the police statement it is recorded at page 0039 Vol. II that " I had no doubt at this point that Mr. Tejpal was trying to prove his innocence in a devious manner. If he needed to get in touch with his daughter, he could have done so through his wife or daughter or nephew or anyone from his family without messaging me about her, or falsely claiming that all that happened was a "drunken banter". PW1 states that she suspected that the formal apology was drafted by Shoma, however, she voluntarily says that as it was signed and sent by the accused she accepted that it had come from him. PW1 states that since both apologies were sent to her from the email address of the accused and since except he as Editor-in-Chief, no one else had access to his email address, she assumes that they came from the accused and she was also assured by Shoma that the accused would send her these apologies and she later acknowledged that he had sent them. PW1 states



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that the accused had not admitted in writing to have sexually assaulted her on 7th and 8th of November, however in his SMS's and WhatsApp messages he had referred to the incidents, tried to minimize them and dissuade her from speaking about them. PW1 denied that besides referring to the incidents as drunken banter the accused had not described the incident in any other manner in the SMS's and WhatsApp messages sent by him to her. PW1 stated that the accused had also referred to the incidents as "the smallest thing" and also sent her an SMS which said "the finger tips" referring to the time he had forcibly penetrated her vagina with his fingers. PW1 states that the accused had admitted that he has committed sexual assault on her in the personal apology marked at exh 733(3) X-3 as the accused says "I am sorry at the immense distress that's been caused to you by my lapse of judgment but I want you to know its been totally devastating for me too in every possible way (and since you know Tiya and Geetan well, you would know what I am saying)". "This if for me to figure out how it went so terribly misunderstood and wrong".



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PW1 further stated that in the email the accused further says "I also want to clarify that yes, you did say at one point that I was your boss and I did reply 'that makes it simpler' but in the very same breath and sentence I said to you "I withdraw that straight away-no relationship of mine has anything at all, ever, to do with that." PW1 pointed out that further in the email he also says that "I had no idea that you were upset or felt that I had been even remotely non consensual until Tiya came and spoke to me the next night. I was shocked and devastated at the time. Both because you felt I had imposed on you (which had neither been my reading or intention) and because I felt I had been totally irresponsible and foolish to have anything furtive to do with my daughter's intimate friend. At that very moment I was filled with shame, and still am." PW1 further stated that the accused further says "you have made it clear that I read it all wrong and I will not dispute it, nor underplay your anger and hurt." She states he further says "I ask you to forgive and forget it I will meet your mom and apologise to her too - and Aman if you so wish." and he



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finally also says "my punishment has already been upon me and will probably last till my last day. Tarun."

102. PW1 states that on 8.11.2013 the accused had sent her an SMS at 8.29 p.m. stating "where r u?". Thereafter on the same day at 8.42 p.m. the accused sent her another SMS "??". PW1 denies that the accused always contacted her through his phone. PW1 states that she had told her mother about the accused sexually assaulting her on 07.11.2013 and 08.11.2013 but withheld most details from her. PW1 states that she does not remember the exact words made in her email in response to the personal apology that "you were talking about 'sex' or 'desire' because that is what you usually choose to speak to me about, unfortunately never my work, which if you had occasioned to read, you might not have attempted to sexually molest me". PW1 admits that it is recorded in her police statement that "Tiya left the Capiz bar right after this at around 11.20p.m." and that after Tiya left the Capiz bar she, Mr. De Niro and Drena were at the Capiz bar for a while but she does not



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remember for how long and she does not recollect whether she had stated in her statement to the police that after Tiya left in half an hour Robert De Niro and Drena asked to be dropped back to their room. PW1 admits, upon being confronted with the police statement, that it is recorded that "in half an hour, Mr. De Niro and Drena asked to be dropped back to their room." PW1 states that she did not mention this line in her email attachment titled testimony dt. 18.11.2013 addressed to Shoma and 161 and 164 statements that "because it was De Niro's first night at the festival, the accused had conveyed to me that he wished to drop Mr. De Niro to his room to wish him good night along with me". PW1 voluntarily states that she has stated the above in different words in two previous statements under 161 and 164 and email attachment. PW1 states that she did not mention this line in her email attachment titled testimony dt. 18.11.2013 addressed to Shoma and 161 and 164 statements that "when I came out I was in shock and trauma" and that "my colleague was shocked and horrified" and that "they suggested that I leave Goa and



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THiNK fest but I could not do this because I was sure that if I abandon my duty I would definitely lose my job". PW1 states that she did not mention this line in her email attachment titled testimony dt. 18.11.2013 that "I am daughter of a single mother who has raised me on a salary and losing my job would have caused us financial distress". PW1 admits, on viewing the CCTV footage contained in MO no.19, that the accused and she are coming out of the lift on the ground floor of Block 7 after dropping Robert De Niro on 7.11.2013 at 22:28:07 as reflected in the date and time stamp seen in the CCTV footage. PW1 states, after viewing the CCTV footage contained in MO no.19, that the accused and she are walking back into the lobby on the ground floor of Block 7 from outside on 7.11.2013 at 22:33:53 as reflected in the date and time stamp seen in the CCTV footage and further states that the accused can be seen holding her by the arm and taking her into the lobby of the ground floor of block 7 from the outside. PW1 denies, after viewing the CCTV footage contained in MO no.19, that the accused has put his arm around her shoulder when they



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are walking back into the lobby on the ground floor of Block 7 from outside on 7.11.2013 till they enter the lift and states that accused is holding her by the arm and taking her into the lift on the lobby of the ground floor of Block 7 from outside on 7.11.2013 until they enter the lift. PW1 admits that she has so stated in her police statement that the accused 'put an arm around her shoulders and said "lets go wake up Bob" (Mr. De Niro)'. PW1 admits that in her email attachment titled "testimony" it is stated that Mr. Tejpal held her arm and pulled her back into the lift and said "lets go wake up Bob". PW1 states that she does not admit that in the CCTV footage contained in MO no.19 she can be seen hurriedly and rapidly exiting the lift on the second floor on 7/11/2013 and the accused walking behind her after the incident and states that accused is walking in front of her at a leisurely pace while wiping his mouth and she is walking behind him slowly as she was in a state of shock after being sexually assaulted. PW1 states that the CCTV footage contained in MO no.19 it can be seen that she is following the accused to the same staircase on the way



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down from the second floor to the first floor after exiting the lift after the incident on 7/11/2013 and states that she is not following the accused to the same staircase on the way down from the second floor to the first floor but voluntarily states that she is merely walking behind him in fact it is clearly visible to her that she is trying to discreetly adjust her dress having just pulled her underwear up, her hair has also come loose as a result of the assault.

103. PW1 denies that in the CCTV footage contained in MO no.19 she and the accused can be seen to be in a conversation when they reached the ground floor by stairs after the incident of 7.11.2013 and still in a conversation exiting block 7 walking leisurely side by side. PW1 voluntarily states that it is clear that the accused is saying something as he is gesturing with his arms wide open and the accused is walking at a leisurely pace, she is tying her hair up, as mentioned before as seen in the footage played previously her hair had come undone as a result of the struggle inside the lift when she was being



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assaulted. PW1 says that the only point at which they are next to each other is at the exact exit of block 7, after this she was walking in front of the accused and he behind her. PW1 states that she does not understand the question that did it happen that on 8.11.2013 before the incident when the accused allegedly called her, she were frightened that this would lead to a repeat of the previous night and she were scared of getting into the lift with him again and more terrified that he was going to try and take her into a room this time and that he held her by the wrist and took her into the lift and that she did not scream outright because there were extremely high profile guests all over block 7. PW1 admits that it is recorded in the police statement that "I was frightened that getting into the lift with him again would lead to a repeat of the previous night and so I said "what does he need Tarun? I'll go upstairs and get it". PW1 states that she was scared of getting into the lift with him again, and even more terrified that he was going to try and take me into a room this time. According to PW1 the accused held her by the wrist and took her into the lift



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and she did not scream outright because there were extremely high profile guests all over block 7 and she was determined to handle things as professionally and firmly as she could. PW1 admits that It is recorded in her statement before the Magistrate that "but I did not want to get into the elevator with Mr. Tejpal again as I feared that he would certainly abuse me again. I said 'what does he need Tarun? I'll go up and get it". PW1 states that she was afraid, she wanted to appear as professional and calm as possible and by this time Mr. Tejpal had already called the elevator to the ground floor and as the door opened he held her by the wrist and pulled her in and she did not scream because block 7 was at this time full of extremely high profile guests. PW1 admits, when confronted with the scene of offence panchanama at Exh.369, that It is recorded that on 8.11.2013 Tarun Tejpal came to her asking her to accompany him through the lift to the second floor to Mr. De Niro's room and she offered to go herself for the cause, however, Mr. Tejpal held her hand and pulled through the lift on the right and she went into the lift with him where in the lift



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she was sexually assaulted once again by Mr. Tarun Tejpal but she voluntarily says that on the same day when this panchanama was conducted and she was shown the CCTV footage certain minor details about what happened on the second day when she was assaulted which she had forgotten due to trauma of the first day's assault which was far more severe, came back to her and these clarifications were recorded by the police and the panchas in the scene of offence panchanama. PW1 was shown the scene of offence panchanama at Exh.369 and was asked to point out where it is recorded in the scene of offence panchanama that she clarified that the accused had not pulled her inside the lift but had used his authority to take her inside the lift on 8.11.2013. PW1 states after going through the entire panchanama that it is there on page 12 of the scene of offence panchanama (pg.0243 of Vol.2). At this time, PW1 further informs that now she recollects that having taken the stair case to go down from the second floor to the ground floor and that she could not remember what had happened immediately after the sexual assault on her by Tejpal in the moving



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lift due to shock and trauma. Further on page 13 (0244 vol. 2) In the second paragraph where the CCTV time stamp is given from 20:09:28 extended upto 20:10:40, PW1 is seen walking through the corridor or passage towards the Grand club and "again coming" with a male wearing a hat. PW1 informs that the said man is the accused and that they both went into the right side lift. PW1 informed that at this time the accused informed her to bring something from Bob's room.

104. PW1 admits that it is not specifically recorded in the scene of panchanama at Exh.369 that she has clarified that the accused used his authority to take her inside the lift on 8.11.2013 and voluntarily states that the language in the scene of offence panchanama is that of the person recording it and that these facts were stated by her, that the accused was her boss and on the 8.11.2013 the accused gave her instruction and asked her to obey it as someone who was employed by him and she could not refuse without jeopardizing her career. She also stated that she was in a state of shock due to her



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assault of the previous night and these facts are recorded in different language in the scene of offence panchanama.

105. PW1 admits that the CCTV footage contained in MO no.19 shows that she reached outside the lobby of block 7 before the alleged sexual assault on her at 20:09:41 on 8.11.2013 as reflected by the time and date stamp in CCTV footage MO no.19 and voluntarily states that she can be seen exiting the car and walking towards the lobby at the time mentioned above. PW1 admits that the CCTV footage contained in MO no.19 shows that she is holding her dress with her right hand before entering the lift on 8.11.2013. PW1 admits that in the email dt. 16.11.2013 (vol 4 pg.0573 Exh.704) it is recorded that the door opened on the wrong floor and he said again - "the universe is telling us something" to which she said she is taking the stairs and started walking out, he pulled her back in, sensing that she was on the verge of hysteria just smiled and patted her behind. PW1 says that it is not specifically recorded that "When the lift stopped on the second floor, I was



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extremely nervous and rushed out of the lift in blind panic and was looking around for where to run. I heard him say something behind me. As I turned around I saw he had come out and pressed the button of the lift again and walked in. Seeing the doors of the elevator open, in confusion and panic I ran back inside because I was not thinking clearly." PW1 admits that in the email attachment titled testimony dt. 18.11.2013 (vol 2 pg.0047 marked as X-1 colly) it is recorded that the door opened on the second floor and he said again - "the universe is telling us something" to which I said I am taking the stairs and started to walk out. He pulled me back in the lift, sensing that I was on the verge of hysteria by this point, he was totally comfortable physically man handling me but sensing my sheer panic he did not touch me until the lift reached the ground floor" and that it is not specifically recorded that "When the lift stopped on the second floor, I was extremely nervous and rushed out of the lift in blind panic and was looking around for where to run. I heard him say something behind me. As I turned around I saw he had come out and pressed the button of the lift again



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and walked in. Seeing the doors of the elevator open, in confusion and panic I ran back inside because I was not thinking clearly." PW1 admits that in the statement to the police and the Magistrate it is recorded that at this time the door opened on the second floor, Mr. De Niro's floor and he said again - "the universe is telling us something" to which she said "I am taking the stairs and started to walk out. He pulled me back in the lift, sensing that I was on the verge of hysteria by this point, he was totally comfortable physically man handling me but sensing my sheer panic he did not touch me until the lift reached the ground floor" and that it is not specifically recorded that "When the lift stopped on the second floor, I was extremely nervous and rushed out of the lift in blind panic and was looking around for where to run. I heard him say something behind me. As I turned around I saw he had come out and pressed the button of the lift again and walked in. Seeing the doors of the elevator open, in confusion and panic I ran back inside because I was not thinking clearly." PW1 states that the CCTV footage contained in MO no.19 shows that the accused did not



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make any physical contact with her before or while entering the lift before the incident of 8.11.2013. PW1 states that the CCTV footage contained in MO no.19 shows that the accused did not pull her back into the lift when she and the accused exited the lift on the second floor during the incident of 8.11.2013. PW1 states that the CCTV footage contained in MO no.19 shows that she is holding her dress with her right hand while exiting the lift on the second floor during the incident of 8.11.2013. PW1 states that the CCTV footage contained in MO no.19 shows that the doors of the lift closed on the second floor before she and the accused re-entered the lift after they had exited the lift on the second floor during the incident. PW1 states that she is walking ahead of the accused and is looking in every direction as she is in a state of complete panic, upon seeing the CCTV footage contained in MO no.19 and when asked where she is standing vis-a-vis the accused and where she is facing when the lift door closes and before it re-opens after they have exited the lift on the second floor during the incident of 8.11.2013. PW1 states that in the CCTV footage contained in MO



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no.19 it is seen that the accused and she had exited the lift on the ground floor, at 20:11:12hrs. after the incident of 8.11.2013. PW1 states that in the CCTV footage contained in MO no.19, it is seen that she is accompanying Robert De Niro and Drena to the lift on the ground floor from the VVIP lounge on 8.11.2013 at 20:24:03hrs. PW1 states that in the CCTV footage contained in MO no.19 it is seen that PW1 and the butler Sandeep Rawat after dropping Robert De Niro to his room exited out of the lift on the ground floor at 20:27:20hrs and she is seen proceeding towards the VVIP lounge. PW1 admits that in the CCTV footage contained in MO no.19 it is seen that PW1 and the butler Sandeep Rawat are seen exiting the lift on the second floor on 8.11.2013 at 20:44:54hrs. in order to go to the suite of Robert De Niro to take him for dinner. PW1 admits that in the email dt. 16.11.2013 at Exh.704, it is not recorded that she was pushed up against the wall of the lift. PW1 states that in the email dt. 16.11.2013 at Exh.704 it is not recorded that the accused put his tongue in her mouth. PW1 states that in the email dt.



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16.11.2013 at Exh.704, it is not recorded that the accused pulled her underwear down to her ankles. PW1 states that in the email dt. 16.11.2013 at Exh.704 to Ishan that during the incident of 7.11.2013 where it is not recorded that the accused put his face between her thighs and put his tongue in her vagina but it is stated that the accused attempted to perform oral sex on her. PW1 states that it is not recorded in her email dt. 16.11.2013 to Ishan attachment titled testimony, her statement to the police dt. 26.11.2013, her supplementary statements to the police and her statement to the Magistrate that she tried to rush out but she was hampered because she had to pull up her underwear and as she walked out she was adjusting her dress. PW1 admits that in her email dt. 16.11.2013 at Exh.704 it is not recorded that she reached the Grand Hyatt on 8.11.2013 in a state of extreme stress and anxiety. PW1 states that in the email attachment titled testimony dt. 18.11.2013 it is stated that when the doors closed, the accused started to try and kiss her again.



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106. PW1 states that she is aware that the Bharatiya Janata Party had animosity with Tehelka because of certain stories carried by the magazine as well as sting operations conducted by the reporters of the magazine. PW1 states prior to THINK 2013 she had not discussed rape compensation with Rebecca John, Miss Vrinda Grover, Miss Kavita Srivastav, Ms. Kavita Krishnan and states that she had written to all of them to seek comment for a story commissioned by Tehelka on the issue of whether victims of rape across the country receive the same compensation, and whether they received it on time and she does not recollect whether all of them replied to her SMS's and emails seeking comment, she does not recollect what each of them told her about rape compensation and states that the messages or emails seeking comment would have been sent by her prior to THINK 2013. PW1 states that she is seen talking to Shoma Chaudhury during the VVIP party in the lounge of block 7 on the night of 8.11.2013 after the alleged sexual assault of 8.11.2013 and speaking



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with Shoma in the photograph. PW1 admits that the accused did not tell her that she would lose her job for having told Tiya on 8.11.2013. PW1 states that she does not recollect if the accused did anything else physically to her after he held her by the arm and took her into the lift and forcibly kissed her, before he went down on his knees during the incident of 7.11.2013. PW1 states during the scene of offence panchanama it was pointed out that the doors of the lift could be prevented from opening by pressing a button on the panel. PW1 states that the hand of the accused was on the panel. PW1 states that she did not catch the hands of the accused when he was lifting her dress during the incident of 7.11.2013. PW1 states that she did not crouch when the accused was lifting her dress during the incident of 7.11.2013. PW1 states that she is not well acquainted with the buttons on the lift panel of the lifts in block 7. PW1 states that in the email attachment titled Testimony it is stated that "Mr. Tejpal lifted my dress, went down on his knees, and pulled my underwear down". PW1 states that in 161 statement to the police it is recorded that " I was still

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begging him to stop when Mr. Tejpal lifted my dress up (neon pink and orange, knee length, sleeveless) went down on his knees and pulled my underwear down to my ankles". PW1 states that in the 164 statement to the Magistrate it is recorded that "Mr. Tejpal lifted up my dress which was pink and orange, sleeveless and knee length. I kept begging him to stop, but it was like talking to a deaf person who did exactly what he wanted. Having lifted up my dress he went down on his knees and pulled my under wear down to my ankles". PW1 states that she did not fight back against the accused when he began to disrobe her during the incident of 7.11.2013. PW1 states that in the scene of offence panchanama at exhibit 369 at page 9 of panchanama it is stated that "she further informed that from the lift till a little after Capiz bar Tarun Tejpal was accompanying her and then Tarun Tejpal went towards the performance area and she went into the crowd where the guests were drinking, eating, talking, mingling around etc. in the big open lawn.



107. PW1 has explained the following actions

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happened during a matter of seconds, they were rapid and therefore it was difficult for her to give a exact sequence of the following: the accused went down on his knees, lifted her dress, pulled down her underwear and forcibly inserted his tongue into her body. To the question as to why it is stated in her email dated 16/11/2013 at exhibit 704, email attachment titled "testimony" dated 18/11/2013, her statement to the police and her statement to the Magistrate that after the accused lifted her dress he went down on his knees. PW1 does not recollect as on the date of scene of offence panchanama that the lift was not in motion during the incident of 7/11/2013.

108. PW1 admits that in the email attachment titled "testimony" where it is recorded "Five minutes later, As I was walking into the grand club at block 7, Mr. Tejpal was coming out of the lounge". PW1 does not recollect if she had deleted any other emails from November 2013. PW1 does not recollect whether she has deleted the emails containing the ambiguities sent by her to Masooma



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prior to 16/11/2013. PW1, after showing Exh.704, states that she does not recollect whether it is stated in the email dated 15/11/2013 sent by her to Shougat, Vishnu and Ishan "I removed some ambiguity in this one".

109. PW1 admits after being shown volume XII, page 2527, and the message received by her on 10/11/2013 at 3:28pm from VM-travel and it relates to confirmed flight ticket to Mumbai on 10/11/2013 at 18:30 hours. PW1 does not recollect if she had not informed any one at Tehelka that she was not flying to Mumbai to see Robert De Niro off at the Mumbai airport. PW1 states that she felt physically sick after the incidents during THINK 2013. PW1 states that it did not occur at any time to her to approach Shoma, Neena and Payal and seek, sick leave and leave THINK 2013 and states that it would not be possible for her to do so because unless she could explain why she was feeling sick it would be seen as an abdication of her responsibilities which were repeatedly explained to her as being of incredible importance. PW1 states that she does not recollect who Nikhil is in the chat



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at page 382.

110. PW1 admits at page no 2534 of volume XII she sent a SMS to Raghu Karnad on 15/10/2013 at 10:55pm stating "Rags. You know what Tehelka is like. Its run on the blood of overworked and underpaid journalists who think they're making a difference. My time with them is running out but I agree about the scooting... its defining". PW1 does not recollect that she told Shoma that she wanted an apology from accused in order to obtain a "closure" of the matter at the organization level. PW1 states that in the email at Exh.704 and the email attachment titled testimony that, "I fell asleep around 5.30 am knowing that I would have to return to work in few hours" is not recorded. PW1 states that It is not recorded in her email at Exh.704 and the email attachment titled testimony that, she reached the Grand Hyatt in a state of extreme stress and anxiety after the incident of 07.11.2013. PW1 states that she did not state in her email at exhibit 704, email attachment titled testimony, police statement dated 26.11.2013 the



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statement before Magistrate and her supplementary statement dated 08.01.2014 that "instead he was talking to Mr. Rohit Chawla, a celebrity photographer, a friend of Mr. Tejpal and also a guest at THINK Fest. While in conversation with Mr. Chawla, Mr. Tejpal gestured to him saying that he would call him later and walked into the lift. As the accused was my boss and had instructed me to accompany him I had no choice but to follow him inside the elevator." PW1 did not state in her email at exhibit 704, email attachment titled testimony, police statement dated 26.11.2013 the statement before Magistrate and her supplementary statement dated 08.01.2014 that "When the lift stopped on the second floor, I was extremely nervous and rushed out of the lift in blind panic and was looking around for where to run. I heard him say something behind me. As I turned around I saw he had come out and pressed the button of the lift again and walked in. Seeing the doors of the elevator open, in confusion and panic I ran back inside because I was not thinking clearly." PW1 admits that in the email to Ishan dt. 16.11.2013 it is recorded that "as we made our way



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out of the elevator of block 7 at the Grand Hyatt, Mr. Tejpal held my arm and pulled me back into the lift". PW1 admits that in the police statement it is recorded that "as we made our way out of the lobby of block 7 on the ground floor at the Grand Hyatt, Mr. Tejpal put an arm around my shoulders and said - 'lets go wake up Bob' (Mr. De Niro)." PW1 states that in the email to Ishan dt. 16.11.2013, police statement, supplementary, scene of offence panchanama and before the Magistrate it is not recorded that she had seen the accused pressing "a button" on the lift panel during the incident of 7.11.2013. PW1 states that it is not recorded in the email attachment titled testimony that the accused put his tongue in the vagina but where it is stated that " he attempted to perform oral sex on me as I continued to struggle and hysterically asked him to stop." Witness answers that it is so recorded that "he attempted to perform oral sex on me as I continued to struggle and hysterically asked him to stop."



111. PW1 states in the email dt.

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16.11.2013 it is not recorded specifically that the accused put his fingers in the vagina but where it is stated that "at the moment he began to try and penetrate me with his fingers, I became scared and pushed him and asked him to stop the lift". PW1 states that in the email attachment titled testimony dt. 18.11.2013 it is not recorded specifically that the accused put his fingers in the vagina but where it is stated that "at that moment he began to try and penetrate me with his fingers. I became scared and pushed him hard and asked him to stop the lift. He would not listen."

112. PW1 stated in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, in her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that "as we came down from the second floor via the stairs was when accused said "it is alright to be in love with more than one person" and "well this is the easiest way for you to keep your job".

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PW1 does not recollect whether in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that Robert De Niro and Drena shared the same suite. PW1 admits that she did not state in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that during the incident of 7.11.2013 she could not understand why the doors of the lift would not open and which is why she thought that the lift was in motion. PW1 admits that it is not recorded in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that she was "physically restrained by the accused" during the incident of 7.11.2013. PW1 admits that it is not recorded in her supplementary statement dt. 8.1.2014 that during the

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scene of offence panchanama the police verified that the doors could be prevented from opening at any floor by pressing a certain button. PW1 states that she did not state in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that the accused was stronger than her and that she thought that if she hurts him he would beat her up and hurt her even worse. PW1 states that she did not state in her supplementary statement dt. 8.1.2014 that she thought that the accused held her by her arm and pulled her in the lift when infact he used his authority to take her inside the lift during the incident of 8.11.2013. PW1 did not state in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate and the supplementary statements that the accused was in conversation with Rohit Chawla before entering the lift on 8.11.2013.



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113. PW1 states that in the email to Ishan dated 16.11.2013 and email titled testimony dated 18.11.2013 it is not stated that "At this point I was still very afraid of losing my job but I was also worried about my physical safety."

114. PW1 states that in the email to Ishan dt. 15.11.2013 and the email attachment titled testimony dt. 18.11.2013 it is not recorded "Even though Drena and Mr. De Niro had asked me to accompany them I knew that my duty was over and it was no longer necessary for me to be there. Once they had left I had no other work to distract me from confronting the fact that I had been sexually assaulted by some one whom I trusted."

115. PW1 states that in the email to Ishan dt. 16.11.2013 and the email attachment titled testimony dt. 18.11.2013 it is not recorded "At the International Centre, Goa I packed my belongings, checked out of the International Centre and was ready to go home, at this time I realized that my mother was staying in Mumbai in



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my one bedroom flat along with three of her colleagues whom I had never met. She was in town in Mumbai for a conference and would be busy all day. I really wanted to see my mother and break down, cry and discuss things with her but I would not be able to because my house in Mumbai where my mother was staying at that time was full of strangers. I called my friends Harsimran Gill and Aastha Atray who knew about what had happened to me and asked them if I could stay with them as I knew that they would let me process my grief and trauma at being sexually assaulted. I went to Casa Paradiso Hotel in Panjim where they were staying and spent that night there. The next morning Aastha returned to Mumbai and Harsimran and I went to stay at a friend's home in Vagator. I stayed there between 11th to 15th of November, 2013. I needed this time to think about my options for several reasons. I wanted to complain but I was scared. As mentioned before I have been raised by a single mother and we had struggled financially. Losing my income would have been distressing for us both."



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116. PW1 states that she did not state in the email to Ishan dt. 16.11.2013 and the email attachment titled testimony dt. 18.11.2013 that "My job at Tehelka was my first job. The editors there had frequently told me that my writings reminded them of my father. This also was a connection that I was going to lose. I was also afraid that even though at the time when I told Tiya about her father she had stood by me that our friendship would end if the complaint becomes public which turned out to be true. I was also a afraid of the incredible wealth and power the accused would use against me."

117. PW1 states that she did not lift her knees. PW1 states that she does not understand the question whether the doors of the lift remains open or close when the lift is stationery at anytime.

118. PW1 states that she came by car on 7.11.2013 and is seen in CCTV footage outside block 7. PW1 states that in CCTV footage of 8.11.2013 at 20:10:12 to 20:10:17 (as per the date and time stamp in the CCTV footage) contained in MO no.19 states that

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she is asking the accused what Mr. De Niro needs from his room as the accused had just told her that she had to accompany him to the suite of Mr. De Niro and Drena. Mr. Rohit Chawla is visible in this footage, Mr. Chawla is speaking to the accused and she looked in the direction of Mr. Chawla but she was not speaking or gesturing to Mr. Chawla. And in the same footage the accused can be seen gesturing to Mr. Chawla and saying that he will call him later, entering the lift and pressing the button for the floor where he wanted to go and to take her.

119. PW1 states that Ishan was her friend since school and she met Ishan socially even before she met Aman. Ishan became her close friend after Aman and she became friendly. PW1 states that she did not give an account of expenditure to Tehelka of the money she had taken from Tehelka to spend during the day out with Robert De Niro on 9.11.2013. PW1 upon showing the photographs at Exh.370(1) and the witness is asked how many times she has tied and untied her hair in the course of the scene of offence panchanama. The witness answers that in the course of over 85 photographs

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taken over the course of a whole day on a humid afternoon in Goa she tied and re-tied her hair at least twice and she did not see this as a habit. PW1 states that she made a call to Shamina Shafiq on 22.11.2013 at 11.56a.m. PW1 states that she received two messages from Shamina Shafiq on 22.11.2013 and the first message says "this is member National Commission for Women Shamina Shafiq. I wish to speak to you confidentially" sent at 11:55:11a.m. And the second message says "Shamina.Shafiq@nic.in" at 1:41:55p.m.

120. PW1 states that she may have posted the following on her Instagram account "trigger warning, Governments do not care about women's safety, their lives or their agency. In a case that suits their political agenda, they will move heaven and earth to register a complaint they learned about on Twitter, reject a woman's agency about whether she ever wanted to go to the police, consign her life to the flames. When a Dalit family makes a complaint about their daughter's rape and murder and asks for the law to step in, that



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complaint falls on deaf ears, her body is consigned to the flames so rape cannot be proved #hathras”.

121. PW1 states that in her police statement it is not stated in specific words that the accused and she were “outside block 7 for about 5 minutes”. And voluntarily states that it is recorded that “as we made our way out of the lobby of block 7 on the ground floor at the Grand Hyatt, Mr. Tejpal put an arm around my shoulders and said - 'lets go wake up Bob' (Mr. De Niro).

122. PW1 states that in the email to Ishan it is not stated in specific words that the accused and she were “outside block 7 for about 5 minutes”. But voluntarily states that it is recorded that after dropping Mr. De Niro to his suite “as we left the suite Mr. Tejpal and I were in conversation ...” and “as we made our way out of the elevator of block 7 at the Grand Hyatt Mr. Tejpal held my arm and pulled me back into the lift.”

123. PW1 states that in the email attachment



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titled testimony it is not stated in specific words that the accused and she were "outside block 7 for about 5 minutes". But voluntarily states that it is recorded that after dropping Mr. De Niro to his suite "as we left the suite Mr. Tejpal and I were in conversation ..." and "as we made our way out of the elevator of block 7 at the Grand Hyatt Mr. Tejpal held my arm and pulled me back into the lift."

124. PW1 states that in the statement to the Magistrate it is not stated in specific words that the accused and she were "outside block 7 for about 5 minutes". But I voluntarily say that it is recorded that "as we left Mr. De Niro's suite Mr. Tejpal and I were in conversation." And they exited the lift of block 7 on the ground floor approximately at 10.30p.m and on their way out of the lobby Mr. Tejpal said lets go wake up Bob. PW1 states that in email dt. 18.11.2013 X-1 colly pg. 0046 Vol. 2 sent by Pw1 to Shoma Chaudhury where it is recorded that "As of Saturday evening, he sent me text messages insinuating that I misconstrued 'a drunken banter.' That is not what happened". PW1 states that in the email dt.



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21.11.2013 marked X-11 pg. 0068 Vol. 2 where it is recorded "however given that his apology presents an entirely different version from my testimony, i.e. attempts to establish that a sexual liason took place as opposed to him sexually molesting me I insist once again in the spirit of justice to constitute an anti sexual harassment cell in accordance to the Vishaka guidelines to investigate this matter."

125. PW1 states that prior to THINK 2013 she was asked to write an article on whether rape survivors received adequate compensation or not and whether State Governments were living up to the promise that they had made of compensating survivors. This article was called "For a pound of flesh". However the headline was not provided by her but by an editor. PW1 admits that she had sent whatapp messages to Danila stating "What about the fact that I'm a fearless feminist?"

126. PW1 states that facts became clear to her by watching the CCTV on 28.11.2013 during the scene of offence panchanama. PW1 states that she did not press
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the emergency or alarm button during the incident of 8.11.2013. PW1 admits that she had sent an SMS on 8.11.2013 at 10:13:14p.m. to Sandeep Rawat the butler saying "where's his drink?"

127. PW1 states that in her email to Ishan dt. 16.11.2013 "he smiled again and made me stand in front of him with my back facing to him and started to lift up my dress" is recorded.

128. PW1 states that in September 2012 in Delhi a police officer who was not in uniform followed and threatened her and a group of her friends and that she wrote in the email dt. 16.9.2012 at 7:08a.m. with the subject "Cops in Delhi-SOS" sent to the editors and bureau of Tehelka "a police officer just pulled his gun on my friend and I, tried to molest us was wearing his badge upside down I have part of his licence number and know what he looks like, what can I do? Have made a complaint on the 100 number".



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129. PW1 states that she had filed a complaint against that police officer and there was a departmental inquiry held against the Police Officer.

130. It was argued by Spl. PP. that the above evidence of the prosecutrix is not only trustworthy and realible but is also of sterling quality and that on the basis of the said evidence only the accused can be convicted. Spl. PP. also submitted that the accused in the present case has been charged of rape under section 375 of IPC viz without consent and hence want of consent is a cardinal element in this form of rape in which the consent will always be at issue. The Spl. PP. submitted that although the defence of the accused is of total denial of the incidents, however the contents of the documents which are produced on record by the prosecutrix in the form of apology emails of the accused, recusal /atonement email, the plea of the accused of drunken banter a conversation having sexual overtones outside the lift and the answers given by the accused at the time of statement under Section 313 of Cr.P.C. to some



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relevant questions are inconsistent and contrary to his plea of denial simplicitor. Spl. PP. also referred various emails of the accused.

(i).-the email at Exhibit 733 (2) [pages 0056 to 0058 of Volume II] which is the 'formal apology' sent by the accused to the prosecutrix/victim, wherein it is stated *"...led me to attempt you on two occasions..... reluctance that you did not want such attention from me...and there is absolutely no ground or circumstance in which I should have violated the propriety andst embedded in that relationship...and I cannot imagine what insanity drove me to compromise these long, proud years of trust and public work."*

(ii).- In the email at Exhibit 733 (3) [pages 0059 of Volume II] which is the 'informal/personal apology' sent by the accused solely to the prosecutrix/victim, it is stated *"...We were playfully and flirtatiously talking about desire, sex,...it was in this frivolous, laughing mood that the encounter took place. I had no idea that you were upset or felt I had been even remotely non consensual... I was shocked and devastated at the time. Both because*

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you had felt that I had imposed on you (which had neither been my reading or intention)... you have made it clear that I read it all wrong... something ostensibly playful gone so horribly wrong..."

(iii).- In the email at Exhibit 733 (5) [pages 0063 and 0064 of Volume II] which is the recusal letter of the accused titled 'atonement' sent by the accused to PW45/Shoma Chaudhury and then circulated by PW45/Shoma Chaudhury to the Editors and Bureau, it is stated "...A bad lapse of judgment, an awful misreading of the situation, have led to an unfortunate incident....It is tragic, therefore, that in the lapse of judgment, I have hurt..."

(iv).- In the email at Exhibit 733 (11) [pages 0068 and 0069 of Volume II] which is the email addressed by the PW1/prosecutrix to PW45/Shoma Chaudhury in reply to the formal apology of the accused, it is stated "...The use of the words 'sexual liaison' is a clear misrepresentation of facts, and an attempt to obfuscate the truth - that he sexually molested me, on two separate occasions and that he violated my bodily

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integrity and trust...However, given that his apology presents an entirely different version from my testimony i.e. attempts to establish a 'sexual liaison' took place as opposed to him sexually molesting me. I Insist...."

(v).- In the email at Exhibit 733 (5) [pages 0061 of Volume II] which is the reply of the prosecutrix to the personal/informal apology of the accused sent to her, it is stated *"...The conversation from that night was not 'heavily loaded' or 'flirtatious'...this is what non consent constitutes...You never, even once uttered the following words: 'I withdraw that straight way - no relationship of mine has anything at all, ever, to do with that.' If your attempt at sexual molestation were really as consensual as you seem to imply..."*

(vi).- In the SMS message at Exhibit 733 (19) [page 0082 of Volume II] sent by the accused to PW1/prosecutrix at 8.43 pm on 16.11.2013 it is stated *"...and because of one drunken banter you so easily say these awful things"* and further In the SMS message reply of PW1/prosecutrix sent to the accused on 16.11.2013 at 8.49 pm at Exhibit 733 (19) [page 0082 of Volume II], it

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is stated, "...it was twice Tarun, not once and it was no banter...and I certainly was not drunk. I asked you to stop repeatedly"

131. The Spl. PP. argued that liberal use by the accused of the expressions 'non consensual', 'reluctance', 'imposed', 'flirtatiously', 'playfully', 'liaison', 'banter', 'misreading' etc. suggests that what the accused is attempting to convey is that whatever he did in the lift during the two nights on 07.11.2013 and 08.11.2013 was founded on mutual consent and was reciprocal while PW1/prosecutrix is found stating categorically that the accused had imposed himself on her and is further found stating that she pushed the accused as hard as she could and fiercely and not coyly during the incident in the lift on 07.11.2013, satisfying therefore the requirement of the proviso to Section 146 and Section 53A of the Indian Evidence Act, 1872 viz. the conflicting versions of the parties makes consent a fact in issue. Spl. PP further contended that it is undisputable that the fact that Section 155 of the Indian Evidence Act, 1872 as amended



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which has omitted sub clause (4) would have the effect of excluding whatever that has been brought on record for the limited and only purpose of proving the prosecutrix to be generally of immoral character and to be having previous sexual experience.

132. It was argued by the Spl. PP. that from the nature of the testimony of the prosecutrix as elaborated above, offences under Sections 375 (1) (b) and (d) read with 376 (2) (f) and (k), 354, 354A, 354B, 341 and 342 IPC are clearly made out viz. it is in the testimony of PW1/prosecutrix that at the time of the incidents, the accused was a paternal figure post her father's accident, the accused was a colleague of her father, the accused was a family friend, the accused was the father of PW1/prosecutrix's closest friend and the accused was her employer/boss who was instrumental in securing for her, her first job. The testimony of PW1/prosecutrix further suggests that in this backdrop she had no reason to mistrust the accused or think that he would harm her in any way, the accused on the first night viz. 07.11.2013 after the elevator doors closed

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(Section 342 IPC) the accused pushed her against the side of the lift and kissed her, put his tongue inside her mouth (Section 354 and 354A IPC), PW1/prosecutrix asked the accused and even begged him to stop but he would not listen, the accused went down on his knees, pulled her underwear down to her ankles (Section 354B IPC), she continued begging him to stop but it was like being assaulted by a deaf person, lifted her dress (Section 354B IPC), put his face between her thighs (Section 354 IPC), put his tongue in her vagina (Section 375 (b) and (d) IPC), put his fingers in her vagina (Section 375 (b) IPC), and even said it would be easier to keep her job if she surrenders to his actions (Section 376 (2) (f) and (k) IPC), during this time the accused had his hands on the panel of the lift and PW1 was looking for a way to exit from the lift and had even asked the accused to open the lift as she was terrified (Section 341 IPC), the accused even put his hands on the shoulders of PW1 to prevent her from struggling and the accused held her by arm/hand and took her into the lift preceding the first incident (Section 341, 354 IPC) (as clarified by PW1) and

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observed in the CCTV footage at approximately 22:33:53 of the time stamp on 07.11.2013 as per the date stamp (MO No. 19). In so far as the second incident it is stated by the PW1/prosecutrix that the accused used his authority over the prosecutrix as her boss to ask her to accompany him into the lift by saying "Bob needs something from his room" and although PW1 volunteered to go and fetch that something, PW1/prosecutrix had no choice but to follow the accused inside the elevator (Section 354A IPC) as the accused exerted his authority as her boss and after the elevator doors closed (Section 342 IPC), the accused began to kiss her (Section 354A IPC), she pushed him and asked him to stop and while PW1/prosecutrix was facing the door of the elevator and trembling, the accused lifted her dress (Section 354B IPC) and said "you are unbelievable" and a little before the doors of the elevator opened the accused reached out and grabbed the buttocks of PW1/prosecutrix (Section 354A (i) IPC).

133. In the light of the settled principles of law laid down in the various decisions cited by the Spl. PP. for the SC (Ors) 10/2014

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prosecution and the advocate for the accused, the scrutiny of prosecutrix's evidence reveals several discrepancies/changes in her versions, spanning from her email to Ishan dated 16/11/13, her complaint to Shoma dated 18/11/13, her 161 CR.P.C. statement, her 164 CR.P.C. statement, examination-in-chief, and cross-examination, each constituting either material omissions and contradictions or improvements in her original narrative which is given and continually shifting details of the account she has proffered. Further, the evidence in this case, in the form of CCTV footage shows the prosecutrix's narrative to be a change about the events that preceded their entry and followed their exit from the lifts on both days. The CCTV footage shows a change to the prosecutrix's narrative both of the physical circumstances of the moments and of her claims of distress, tears, trauma and resistance. There are material contradictions and omissions and inconsistent statements in the deposition of the victim brought on record in cross-examination of PW1 which make her



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testimony of not of sterling quality to base the conviction only on her testimony.

134. The evidence reveals that the prosecutrix through the claim of trauma and devastation, brought pressure on PW45, the managing editor of Tehelka, to submit an apology on her terms on a claim that it would bring closure to the incident. However, the WhatsApp records show that PW1 had already enlisted a battery of friends and networks to release such material on social media the moment the apology reached her. It is evident that the prosecutrix obtained apologies of accused from PW45 Shoma in support of her accusation before the prosecutrix went public.

135. It is the defence of the accused, as suggested to the prosecutrix:- that on 7/11/2013 the accused did not tell the prosecutrix that he wished to drop Mr De Niro to his room to wish him good night and it was the prosecutrix who sought out the accused in the party lawns of her own accord and asked him to accompany Robert de Niro (also referred to as Bob) back to his suite

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In Block 7 of the Grand Hyatt, on the pretext that Mr De Niro had requested to be seen off by the main host himself; that the prosecutrix and the Accused had a couple of drinks on that night on which over a thousand people were socialising on the party lawns; that the prosecutrix and accused were both therefore slightly drunk and that on their way down in the lift after seeing De Niro to his suite, the prosecutrix began flirting with the accused and began to relate to the accused the story of the other famous Bob, the rockstar Bob Geldof, whom the prosecutrix had intimately befriended the previous year at Think; that still in conversation, the prosecutrix sat down on the front seat of a golf buggy parked outside Block 7 after the prosecutrix and accused exited the building and she continued to narrate stories of her amorous escapades to the accused as he stood there in front of the prosecutrix while she sat; that the prosecutrix first told the accused the story of her sexual encounter with Bob Geldof — a speaker at THINK the previous year in graphic and granular detail, including going to Geldof's suite, being rendered naked and laid out on the dining table and



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then being digitally and orally made love to by Geldof; that here the prosecutrix teasingly asked the accused to guess which the prosecutrix preferred; that the prosecutrix also spoke of the impossibility of maintaining any sexual fidelity in a long distance relationship, in reference to her then-boyfriend Aman; that from there the prosecutrix moved to speaking of the last time, eight months prior, when the prosecutrix had visited the Accused's office in Delhi having requested ten minutes to meet with him on an editorial matter, and the prosecutrix told him that when she had left his office that evening, she had been so incredibly aroused that she went straight to the bathroom and masturbated; that at this point the accused cautioned the prosecutrix not to make any such advances towards Robert de Niro, reminding her that there was no scope of misunderstanding with speakers at the event and that Mr De Niro was accompanied by his daughter. The defence of the accused is that this conversation between the accused and the prosecutrix - carried out in the nearly six minutes by the buggy outside block 7 - was referred to as 'drunken banter' in all the



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oral and written communication of the accused with the prosecutrix as well as others subsequently.

136. It is further defence of the accused as suggested to the prosecutrix, that as the prosecutrix and the accused continued talking outside Block 7, the prosecutrix recalled that she had forgotten to give an important piece of information about the next morning's schedule to de Niro, and sensing that the accused was upset by her lapse, the prosecutrix suggested that they should rush back to check if they were still awake, and accordingly the prosecutrix and the accused hurried back into block 7 and entered the lift.

137. It is pertinent to note that whereas the case of the prosecution is that the prosecutrix and the accused were inside the lift for about 2 minutes during the incident of 7/11/13, however, it is the case of the accused that they exited on the 1st floor during the said two minutes, and that it takes about two minutes to enter the lift on the ground floor, exit on the 1st floor, walk to the end of the corridor to the place where the suite of SC (Ors) 10/2014

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Robert de Niro would be otherwise situated, return to the lift on the 1st floor and then exit on the 2nd floor. The chat between the accused and the prosecutrix on 9/11/13 shows that the accused had asserted his defence that there was only drunken banter between the accused and the prosecutrix, which the prosecutrix did not contradict. The only WhatsApp messages admittedly exchanged between the accused and the prosecutrix on 9/11/13 are:-

96450 Hope u told tee it was nothing but drunken banter - from accused to prosecutrix.

96451 I told her we were hammered - from prosecutrix to accused.

96452 And just bantered, I hope. No more - from accused to prosecutrix."

138. The only SMS's sent by the accused to the prosecutrix after the whatsapp exchange as documented on case record are: -

"why what's happened?"





"I can't believe u went and mentioned even the smallest thing to her. What an absence of any understanding of a parent-child relationship"

139. Admittedly, there are no other WhatsApp and sms messages exchanged between the accused and the prosecutrix on 9/11/13.

140. The tone and tenor of the above messages indicate that the accused was upset about Tiya's behavior and questioned the prosecutrix by clearly asserting that he hoped she had told Tiya that it was nothing but drunken banter, to which the prosecutrix simply replied saying that she informed Tiya that they were hammered.

141. The above chat clearly shows that the Accused and prosecutrix were in agreement that there was only drunken banter between them.

142. From the above chat it is clear that the prosecutrix replied that she told Tiya that they were both hammered(drunk) and that the prosecutrix did not reply

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to the message sent by the accused why what happened, and did not deny the version of the accused although the prosecutrix in her deposition states that she had told Tiya about the sexual assault. The explanation given by the prosecutrix is that she was scared of the accused and at the same time claims that on the night of 8.11.2013 she told the accused that she had to tell Tiya about the sexual assault on her as she could not hide the same from Tiya and when according to the prosecutrix she had realized on the night of 8.11.2013 and through Tiya and PW13 Raghu that she would definitely loose her job. The Prosecutrix has not stated a word of threat issued to her by the accused on the night of 7.11.2013. PW13, Raghu Karnad has stated that the prosecutrix has told him on 8.11.2013 that she was feeling safer because he had told the daughter of the accused.



143. Therefore it is clear that on 9/11/13, though the accused asserted his claim that there was only drunken banter between him and the prosecutrix, there was absolutely no denial of the same by the prosecutrix in

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any manner and the non denial by the prosecutrix at the first available moment, of the accused's version gives rise to adverse inference against the prosecutrix. The prosecution has not examined Tiya in order to corroborate what actually the prosecutrix told her and what actually Tiya had told the accused. The conduct of the accused seen in the above messages would be relevant under Section 8 of the Indian Evidence Act in proof of the fact that the accused clearly asserted that drunken banter was all that happened and the conduct of the prosecutrix would also be relevant in the context of the above messages for having indirectly admitted the version of the accused by not replying. There are messages exchanged between the prosecutrix and the accused on 16.11.2013. The prosecutrix has stated that on the evening of 16.11.2013 the accused contacted her through a text message at around 8.00 pm and said "Have you spoken to Tee? Is she alright?" and she responded "Why would she be ok about the fact that you sexually assaulted her best friend that is me" to which the accused replied once again saying "What's with saying this awful stuff?" to



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which she responded "You are lying and you know it. Do not contact me again" and that the accused sent her another message saying "For so long I treated you like one of my best kids and now because of one drunken banter you so easily say such horrible things" and she replied "It was not once Tarun, it was twice and I asked you to stop repeatedly. I was certainly not drunk and it was not banter. You did the most horrible things" and that the accused replied "Oh, so that's what you told Tee. No wonder she is so madly upset. I won't contest anything with her. I will let time and my fatherly love heal what it can", and that she did not respond to the said message and then the accused sent her another text message saying "I don't think I have been this saddened in the longest time" and that again she did not reply. From the above exchange, it is obvious that the accused was absolutely repulsed with the accusation made by the prosecutrix, and exclaimed "What's with saying this awful stuff?" to which the prosecutrix claimed that the accused was lying. The fact that the prosecutrix wrote back that the accused was lying itself suggests that the accused

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denied the version of the prosecutrix. From the above it can be said that the Accused was reiterating that what happened between the Accused and the prosecutrix was drunken banter and that she was so easily saying such horrible things, thereby indicating that the accused refuted her accusations. The prosecutrix has herself stated in chief that through the aforesaid chat the accused was once again trying to claim that the sexual assault was "drunken banter". The above evidence of the prosecutrix clearly shows that even on 16/11/13, the accused was clear in his rebuttal to the prosecutrix that whatever happened between them was drunken banter and that the accused had challenged the version of the prosecutrix.

144. The arguments of the Spl. PP. that from the tone and tenor of the above messages it is evident that the accused has not denied the sexual assault spoken by PW1 to his daughter cannot be accepted as the daughter has not been examined as to what was told to her and there is no denial by the prosecutrix referring the same as sexual assault. The accused made his defence

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the moment the allegation was made public which is evident from the depositions of PW36 Nina and PW45 Shoma that the accused had denied the allegations made against him and had claimed that the incident that happened between the accused and the prosecutrix was the consensual fleeting encounter of drunken banter which is also corroborated through the testimony of DW4 Nikhil Agarwal.

145. PW36, Neena Sharma, has stated that on 18 November 2013, while she was at Fortis Hospital in Gurgaon where the accused, the accused's wife Geeta, and she had taken their mother to begin radiation post her brain cancer surgery, she noticed that the accused had received 2-3 calls from Shoma where he responded by saying that "it's not true, it's a bunch of lies and I will explain it to you when we meet". She has further deposed that on the same day in the evening when accused received the mail from Shoma she saw the accused shaking his head and saying "it's not true at all, it's a bunch of lies, just hear what I have to say". The above evidence of PW36 clearly shows that the very first

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moment the accusations came to the notice of the Accused, the Accused denied the same, consistently claiming them to be a bunch of lies. PW36 has further stated that on the night of 18.11.2013 the accused informed her that he had a drunken banter with the prosecutrix near the Golf Buggy outside block 7 after they dropped Mr. Robert De Niro to his suite and in the course of this conversation the prosecutrix told the accused that on one evening many months prior, when she had visited the office of the accused there were some thunderclouds and also told him how she was attracted to him. PW36 has further stated that the accused further told her that the prosecutrix had also informed the accused that she had a sexual interaction with a former speaker Bob Geldof at Think 2012 and that the accused further told her that the prosecutrix had expressed to him the impossibility of being faithful to her boyfriend as he was so far away (posted in Ethiopia). PW36 has further stated that when she asked the accused about the prosecutrix's complaint email, the accused said that it was totally untrue.

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146. Further PW45, Suparna Chaudhary has stated that when she confronted the accused on the alleged complaint made by the prosecutrix to her on 18/11/13, the accused had said that she was lying and that he and the prosecutrix had a fleeting consensual encounter. PW45 has further stated that the accused also said that they had both had a few drinks and that she was telling him about a previous incident with Bob Geldof the previous year at Think where Mr. Geldof had allegedly performed some sexual acts on the prosecutrix and that the accused also said that the prosecutrix had spoken to him about the impossibility of fidelity to her boyfriend and about meeting Mr. Tejpal in his office on some day of rain and thunderclouds many months prior and of how she was sexually aroused by that meeting. PW45 has further stated that according to the accused the only sexual encounter which he had with the prosecutrix was a sexual conversation which he had outside Block 7 on 7.11.2013. PW45 has further stated that on receiving the email of the prosecutrix on the 18.11.2013 she was extremely angry and though the accused denied the allegations made by

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the prosecutrix she overruled his version and told him to extend an unconditional apology to the prosecutrix.

147. The personal apology of the accused at exhibit 733(3) although not admitted by the accused as sent by him also reveals that the accused and the prosecutrix had a playful and flirtatious conversation about desire and a sex outside Block 7 about Bob Geldof, Aman as well as her visit to the office of the accused. When the prosecutrix was asked whether she made a statement in her email in response to the personal apology that "you were talking about 'sex' or 'desire' because that is what you usually choose to speak to me about, unfortunately never my work", the prosecutrix gave an evasive answer by claiming that she does not remember her exact words. However, it is apparent from the alleged response email of the prosecutrix to the said Personal Apology through her email that the prosecutrix admitted that the accused and she were talking about sex or desire because that is what the accused usually chose to speak to her about, unfortunately never her work.

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There is nothing in the response of the prosecutrix to indicate that she has denied the flirtatious conversation, though she has claimed that she did. It is pertinent to note that, to the question whether the accused was usually choosing to speak to her about sex or desire prior to Think 2013, she answered in the affirmative, though she claimed that the accused also passed sexual remarks. To the question, whether besides the accused making sexual remarks was the accused engaging in any conversation with her having sexual overtones prior to Think 2013, the prosecutrix claimed that she did not understand the question because making sexual remarks is engaging in conversation that has sexual overtones from which it is clear that the prosecutrix was twisting facts. In fact the defence of drunken banter has been accepted by the prosecutrix in her email response, wherein she claims that the Accused always used to have such conversations with her. PW45 has also stated that when the accused sent his personal email to the alleged prosecutrix, the prosecutrix had corroborated some of the facts which the Accused had said regarding their

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conversation about sex and desire and also an earlier meeting in his office where there was a storm and thunderclouds, but she had refuted his interpretation of whatever had occurred between them at Think in Goa. To the question whether it is immoral to have consensual sex with different persons, the prosecutrix answered that she does not believe anything immoral about consensual sex between any two people, and to the question whether she thinks it is immoral to consume alcohol voluntarily or smoke cigarette voluntarily, she answered that she considers if someone is an adult and it does not violate their religion there is nothing immoral about it. Further, when the prosecutrix was asked whether she indulges in conversation containing sexual overtones with friends, she claimed that she does not know how to answer this question. However thousands of her WhatsApp chats/messages, in the mobile of the prosecutrix which were produced by the prosecution under Section 294 Cr.P.C. by the prosecutrix to Biki (Harsimran Gill), Nikhil Agarwal, Kartikey Singh and many others, all on record, provide glaring proof of the prosecutrix's conversations

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with a wide range of people. In fact, DW4 Nikhil Agarwal has stated that it was routine for the prosecutrix to have such sexual conversation with friends. The messaging record shows that it was entirely the norm for the prosecutrix to have such flirtatious and sexual conversations with friends and acquaintances. Therefore, the WhatsApp chats of the prosecutrix, and her propensity to indulge in sexual conversations with friends and acquaintances, as well as her admission that the accused was talking about sex or desire because that is what the accused usually chose to speak to her about, unfortunately never her work, proves that the accused and the prosecutrix had a flirtatious conversation on the night of 7/11/13.

148. The prosecutrix has admitted in cross that she came to know of the contents of the CCTV cameras and the footage of Block 7 for the first time on 28/11/13, prior to which all her statements during investigation were made, including her 161 and 164 statement. The prosecutrix when questioned whether she disclosed in her email to Ishan dated 16/11/2013, in her testimony

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dated 18/11/2013, in her police statement and in her statement to the Magistrate that she was in the conversation with the Accused outside Block 7 for over five minutes on 7/11/2013 after dropping Robert de Niro and before the incident, she evasively answered that she doesn't remember if she has specifically mentioned the location or the phrase "outside block 7" but claimed that she had consistently said that they were in conversation as they exited block 7. This explanation given by the prosecutrix shows that the prosecutrix hid the fact about their conversation outside Block 7. PW70, the IO, Sunita Sawant, has also stated on viewing the CCTV footage contained in 192.168.10.22_08_20131107222801_20131107222924.tve MO no.3 Ex P2, that the CCTV does not show that as the prosecutrix and the accused made their way out of the elevator of block 7 at the Grand Hyatt, the accused held her arm and pulled her back into the lift as stated in complaint, but it is seen that the accused has put his arm around her shoulder and walking out of the lift and outside the lobby of block 7 in this clip. However, the CCTV clearly shows the accused and the

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prosecutrix coming out of the lift on the ground floor of Block 7 after dropping Robert de Niro and walking out of the lobby of Block 7, out through the main entrance, on 7.11.2013 at 22:28:07 as reflected in the date and time stamp seen in the CCTV footage with 50 minutes lag and that later at 22:33:53 (nearly 6 minutes later), the accused and the prosecutrix, he holding her arm, can be seen coming back into the lobby of the ground floor of block 7 from outside. The said CCTV footage therefore clearly shows that the accused and the prosecutrix were outside Block 7 for about 6 minutes after dropping Robert De Niro and before re-entering the lifts on the night of 7/11/13.

149. PW1 states that after dropping Robert De Niro on the night of 7/11/2013, the accused and she reached just outside the lobby before he pulled her back into the lobby and the lift which is contrary to the CCTV Footage. PW1 states that she does not remember the duration of their conversation and they were in conversation continuously since they left the suite of Mr de Niro and his daughter and they were still talking on the

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ground floor outside the lobby of Block 7 when he pulled her back in the lift. To the suggestion that the accused and the prosecutrix had a conversation of about 5 minutes outside the building of Block 7 on the night of 7/11/2013 after exiting the lift and the lobby after dropping Robert de Niro, she again evasively answered that they were continuously in conversation since the time they dropped Mr de Niro to his suite. It is pertinent to note that the prosecutrix has also admitted that when they were in a conversation outside Block 7 before the incident after dropping Robert de Niro to his suite on 7/11/2013, the accused asked her about Bob Geldof, Aman, her stepmother, father, work and many other things, which clearly establishes the fact as contended by the accused that the conversation between the accused and prosecutrix revolved around Bob Geldof and Aman. The statement by the prosecutrix that on the night of 7/11/13 the accused had conveyed to her that he wanted to drop Robert de Niro to his suite after dinner has been marked as an omission in her email to Ishan dt. 16.11.2013, in her testimony dt. 18.11.2013 addressed

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to Shoma, as well as in her 161 and 164 statements, thereby creating a doubt in her statement, being a vital improvement and material omission in her previous statement relating to the very genesis of the transaction leading to the offence. Further this claim by the prosecutrix has not been corroborated by any other witness. There is also no evidence to suggest that the accused had accompanied any other VVIP to their rooms after dinner, and it shows that only because the prosecutrix called the accused under the pretext his guest Mr de Niro had asked for the accused to accompany him back to his suite, did the accused accompany Robert de Niro to his room.

150. When the prosecutrix was questioned further on this aspect, the prosecutrix typically gave highly evasive answers and stated that she does not recall at what time Mr de Niro finished his dinner on the night of 7.11.2013 and that she does not recall how long before Mr de Niro finished his dinner did she meet the accused on the night of 7.11.2013 and that she does not

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recall If she communicated to the accused that Mr de Niro had finished his dinner on the night of 7.11.2013 and that she does not recollect where she met the accused after Mr. De Niro had finished his dinner and she does not recall where the accused joined her and Robert De Niro to accompany Mr. De Niro to his suite on the night of 7.11.2013. It is apparent that the denials of the prosecutrix were to hide the fact that she called the accused to accompany her to the suite of Robert De Niro on the night of 7/11/13 after dinner. It is also pertinent to note that the prosecutrix claimed failure to recollect, while claiming again and again that as a thorough professional she had no other focus or concern apart from Mr. De Niro's needs and well-being and she remembering the precise food and drinks she packed for the De Niro's picnic lunch on 9/11/13. This is in keeping with her highly convenient memory – which fails to function at crucial times, whenever evidence to the contrary is produced.

151. However, it is important to note that PW43 Prawal Srivastava has stated that on the night of 7/11/2013 after uploading the contents of the day's

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sessions on the website, he walked to the dinner area to inform the accused that he had finished the day's work; and when he was standing with the accused at the dinner area at Grand Hyatt the prosecutrix came to the accused and told him that Mr Robert de Niro had finished his dinner and wanted to go back to his room and further the prosecutrix asked the accused to accompany her to drop Mr Robert de Niro to his room.

152. The prosecutrix has admitted that while working for Tehelka at THINK festival she was permitted to drink. Though the prosecutrix tried to conceal the fact that she had a drink by evasively stating that she does not remember if she had a drink on 7.11.2013, she was compelled to admit that she may have had a drink as stated in an email. In her email to Shoma the prosecutrix had clearly admitted that she had a drink on the night of 7/11/13. Further, the prosecutrix was confronted with a photograph later marked as Exh.792(1), which showed the prosecutrix with a wine glass in her hand and on being confronted the prosecutrix admitted that she drank wine on the night of 7/11/13. DW2, Vijay Pandey, has

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also stated he had taken a photograph at Exh.792 (1) on 7.11.2013 at around 7.30 to 8p.m. inside the Grand Hyatt in which the prosecutrix is seen with a wine glass in her hand in the lawns. The above facts establish that the prosecutrix had consumed alcohol on the night of 7/11/13 as claimed by the accused and that the prosecutrix was lightly drunk.

153. PW1 said, in a vague way, that she knew Nikhil Agarwal in Mumbai since 2012, but he was not her friend but a mere acquaintance - this was a brazen attempt at concealing her highly intimate and candid relationship with Nikhil. She also claimed that she does not remember whether she had exchanged 4,000 messages with Nikhil Agarwal between 22/07/2012 to 08/11/2013. To a question whether she was prone to discussing her personal and professional matters and issues with Nikhil Agarwal just the way she was discussing personal and professional matters with Shougat Das Gupta, G. Vishnu and Ishan Tankha, she answered that it was not the same, as Nikhil and she never worked together, and she knew Nikhil through Tiya, SC (Ors) 10/2014

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daughter of the accused, whereas with the others she worked with them, they were her friends, and she knew Ishan Tankha ever since she was in school. To the question whether she had personal and intimate communication with Nikhil Agarwal prior to Think 2013, she answered that she would not describe the conversation as intimate because he was not her closest friend and that she was in communication with Nikhil Agarwal as he was a close friend of her closest friend Tiya and her brother Karan Tejpal and she saw no reason to mistrust him, and they had a casual friendship. The above is a blatant attempt by the Prosecutrix to obfuscate the truth of her relationship with Nikhil, the record of the messages exchanged between them shows. The messages between them suggest that Nikhil may have known her innermost truths and secrets better than anyone else. The Prosecutrix knows that Nikhil knew her intimately in ways that others didn't, his testimony would falsify her claims, which led her, to revise her draft complaint of 16/11/2013 to drop all reference to Nikhil entirely after initially including a reference to him who

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was the first person the prosecutrix met after the alleged incident on 7/11/2013. However, PW1 did not deny that she had no WhatsApp conversation with Shougat Das Gupta Ishan Tankha; and G Vishnu; and Nikhil Agarwal. Further, during cross-examination, the Prosecutrix herself, having got an inkling of the messages on record, admitted that Nikhil Agarwal and she were friendly, although as the facts will reveal, this again serves to highlight, she twists and manipulates the truth by attempting to significantly understate the intimacy of their relationship. DW4 Nikhil Agarwal has stated that the Prosecutrix and he were close friends and they also had an intimate sexual relationship.

154. The chats were referred only to be read against her claims under oath that Nikhil was a mere acquaintance/casual friend, and the purpose of producing the evidence of these chats is to show that the Prosecutrix is lying and that the chats were not referred for the purpose of proving her character. It is difficult to



believe that the prosecutrix is a truthful and reliable witness.

155. DW4, Nikhil Agarwal, states that he knows Harisman Gill @ Bikki. This is evident from the WhatsApp chats amongst the himself, the prosecutrix and Harisman Gill. The contents of the chats are not looked into to show the character of the prosecutrix at all. Nikhil was the first person, the prosecutrix met virtually minutes after emerging from the lift post the alleged incident of 7/11/2013, a fact which the prosecutrix completely hid during the investigation and in her evidence before this Court, despite the crucial role a nearly contemporaneous witness plays in any investigation.

156. It is also very important to note that despite there being a reference to Nikhil being the first person the Prosecutrix had met, in her draft complaint of 16/11/2013, a reference which she later deleted, the IO did not do any investigation, by contacting Nikhil Agarwal, or even did not make attempt to question the Prosecutrix



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about the role a nearly contemporaneous witness plays in any investigation.

157. PW1 in her examination-in-chief deliberately hid the fact that she met Nikhil Agarwal right after the alleged incident of 7/11/2013 after exiting the lift. However, during cross-examination the Prosecutrix was compelled to admit that she met Nikhil Agarwal after being confronted with her email to Ishan dated 16/11/2013.

158. The prosecutrix admitted that she described the incident in the email dt. 16/11/13 at points marked at point B to B, where it is stated that "by this time we had made our way from Block -7 to the main lawns of the Grand Hyatt where I intercepted a friend and immediately asked him to stand and talk to me while Mr Tejpal left". The prosecutrix also admitted that she has correctly written the sentences marked as points A to A at page 0572 of email dt. 16/11/13 Vol. IV, where it is written that "My friend Nikhil Agarwal, also a close friend of Tiya Tejpal - he was the first person I met that I

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immediately alerted to the fact that Mr Tejpal had been inappropriate with me, and that I was feeling very scared and uncomfortable". The above said fact is also admitted by PW12 Shougat in cross-examination. The aforesaid email dt. 16/11/2013 was produced by PW11 Ishan Tanka.

159. In her cross-examination, the Prosecutrix has admitted that Nikhil Agarwal was the first person she met after the incident on 7/11/2013 and that Nikhil Agarwal was standing in the main lawn area and that she told Nikhil Agarwal that she was scared of the accused and therefore he should stand and talk to her until the accused left from there, and that she did not inform Nikhil about the incident that the accused had sexually assaulted her in the lift at that time. If Nikhil Agarwal was her close friend with whom she was in the habit of confiding absolutely everything, why did the Prosecutrix not disclose the sexual assault on her to him, particularly when she was, according to her account, in shock and trauma? Further, if she did not tell Nikhil Agarwal



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anything, why did she write in the email to Ishan that she alerted Nikhil Agarwal to the fact that the accused had been inappropriate with her? The Prosecutrix also admitted that she did not cry in the presence of Nikhil Agarwal. PW1 voluntary states that it was mere moments after she had been sexually assaulted by the accused and that she was in shock and trauma and she did not know how to convey or process her feelings then, is utterly unbelievable, as the Prosecutrix claimed that even at the time of exiting the lift she was blinking back her tears, and had just been through a physical struggle. Therefore if she met Nikhil who was so intimate with her and the sexual assault had taken place, because of which she asked him to stand with her, it is unbelievable that she wouldn't express any emotions to him at that time or let go and not cry in his presence. If Nikhil was swaying as stated by the prosecutrix why did the Prosecutrix ask him to stand with her? Further, if Nikhil was drunk, why did she write in her email to Ishan that she alerted Nikhil to the fact that the accused was inappropriate with her? To the question whether she deleted or omitted from her

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subsequent draft of the complaint or email the incident of meeting Nikhil immediately after the incident, the Prosecutrix answered that she did remove Nikhil from her complaint made to the organisation for several reasons. However, the Prosecutrix did not mention what those reasons were. If the Prosecutrix had actually told DW4, Nikhil that the accused was inappropriate with her, why did she delete the reference to him in her complaint to Shoma and all other statements made by her during investigation, especially given the crucial nature of the first witness. The evidence of DW4 demolishes the version of the Prosecutrix.

160. DW4, Nikhil Agarwal stated that he attended Think 2013 along with his fiancée Diva Ganeriwal, whom he married in the last week of November 2013. DW4 has further deposed that he reached Think 2013 on 7/11/2013 and he arrived at the Grand Hyatt post lunch and when he reached the Grand Hyatt he saw the Prosecutrix in the lobby and he greeted her and hugged her and asked her what she was doing



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and the Prosecutrix told him that she was waiting to receive Mr Robert de Niro and the Accused. DW4 has further deposed that he saw the Prosecutrix later in the evening drinking and chatting with several people in the garden area of the Grand Hyatt. DW4 has further deposed that somewhere around midnight of 7/11/2013 when he was standing at the edge of the garden with his fiancée, he saw the prosecutrix and the accused walking together by the pool side and the Capiz bar towards the garden and that thereafter he saw that the accused turned towards the bar and the prosecutrix walked towards him and his fiancée and that at that time when they parted company the Prosecutrix and the accused were at a distance of about 20 to 25 metres from his fiancée and him. DW4 has further deposed that after separating from the accused, the prosecutrix walked towards him and at that time she had a grin on her face, and she was smiling and looked very excited, and that the prosecutrix waved at him and called out to him to come near her, but he was a little hesitant to go to her as there were some jealousy issues between his fiancée and the prosecutrix





as his fiancée was aware of his past relationship with the prosecutrix. DW4 has further deposed that he therefore asked his fiancée whether he could go and meet the prosecutrix to which his fiancée agreed. DW4 has further deposed that thereafter he walked to the prosecutrix and the prosecutrix had a big grin on her face and told him "I have some gossip to give you, guess who I have been flirting with" and that he said to her in reply "Now who", to which the prosecutrix replied "just guess", to which he asked her "Is it Robert de Niro?" DW4 has deposed that he mentioned Robert de Niro as he knew that the prosecutrix was chaperoning Robert de Niro at Think, but to this the prosecutrix responded "No not Robert de Niro. TTI" and that in reply he said "No way!", but as he wanted to return to his fiancée who was standing alone, he told the prosecutrix that he doesn't have time for the conversation and she told him that he could go back and that she would give him the details the next day.

161. DW4 has further deposed that on 8/11/2013 post lunch he took a smoke break from the sessions at Grand Hyatt and he ran into the prosecutrix at SC (Ors) 10/2014

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the atrium of Grand Hyatt and that the prosecutrix when asked proceeded to narrate the rest of her story to him. She told him that on the night of 7/11/2013, whilst returning back after dropping Robert de Niro to his suite, the prosecutrix had started a flirtatious conversation with the accused, in which she shared the Bob Geldof story with him. DW4 has further deposed that he already knew the Bob Geldof story at that time as she had told him about the same a year prior saying that at Think 2012 the prosecutrix had gone up to Bob Geldof's suite and that Bob Geldof had asked her what do Indian women wear under their sarees, to which she'd replied why don't you see for yourself, and that she'd lifted her saree and Bob Geldof had picked her up and put her on the table and then he'd said to her that "he can't just see it, he needs to touch it", it referring to her vagina, and the prosecutrix allowed him to, and then Bob Geldof touched her vagina with his fingers and then he said "he can't just touch it he needs to taste it", and the prosecutrix allowed him to perform oral sex on her, and that eventually the prosecutrix and Bob Geldof had sex on that day. The Ld.

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SP, PP. had objected to the above part of deposition as hit by sections 155, 53 A and 146 of Cr.P.C. But in my view the above provisions would not apply as the witness is deposing to the facts which are relevant to decide the main issue in question and do not pertain to proving consent or the character.

162. DW4, Nikhil Agarwal has further deposed that when the prosecutrix said TT on 7/11/2013 he understood it as Tarun Tejpal. DW4 has further deposed that on 8/11/2013 at the atrium the prosecutrix further told him that after she told the accused the Bob Geldof story, the accused asked her "What do you prefer, fingers or tongue" to which the prosecutrix asked the accused "Why don't you take a guess", to which the accused responded saying "fingers". DW4 has further deposed that the prosecutrix further told him that she had also mentioned to the accused that she found it difficult to be with just one partner and that she required multiple partners and that the said conversation referred to her boyfriend Aman, and that when the prosecutrix told him all these details, about her conversation with the accused,

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the prosecutrix appeared very jovial and cheerful. DW4 has further deposed that when the prosecutrix told him about the conversation with the accused, he became angry and disgusted with it, and he said to her "Are you going to spare no one? And what do you think will happen when Tiya finds out!". DW4 has further deposed that the prosecutrix had already been telling him in the past on multiple occasions how she found the accused very attractive and that even at that time he had always cautioned her, asking her how on the one hand can she call Tiya her friend and on the other hand she has such feelings towards her (Tiya's) father. DW4 has further deposed that on 8/11/2013 at the atrium, the prosecutrix also told him that she had told the accused on 7/11/2013 how, when she once met the accused in his office, she felt impelled to rush to the washroom and touch herself and masturbate. DW4 has further deposed that he was most disgusted with what she told him as he had always thought that she was simply gossiping about her attraction towards the accused and never thought that she would actually engage with the accused flirtatiously,



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and he thereafter returned back to the sessions. Further, DW4 stated that on 7/11/2013 he had only had a glass of wine as it was his first holiday with his fiancée, and that they wanted to attend the sessions the next day and that they had reserved 9/11/2013 to party. This statement of DW4 clearly contradicts the version of the prosecutrix that DW4 was drunk and swaying with his glass. DW4, Nikhil Agarwal has further deposed that the prosecutrix used to confide in him regularly. DW4 has further deposed that it was a routine affair for the prosecutrix to have sexual conversations with her friends. This fact is also ratified and plainly visible through the WhatsApp chats of the prosecutrix with her multiple friends and acquaintances, and are already a matter of case record.

163. PW12, Shougat Dasgupta has also admitted that that during THINK 2012 the prosecutrix was shadowing the international musician and rockstar Mr Bob Geldof. Although the prosecutrix has denied the same in her deposition. PW47, Walter Pereira, Assistant Director Food & Beverages of Grand Hyatt has also stated that in

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the year 2012 at the THINK Fest, the prosecutrix was assigned as a chaperone for Bob Geldof, an international musician and VIP guest for the 2012 edition of THINK.

164. The cross-examination of DW4, Nikhil Agarwal did not make the slightest dent in his testimony. The testimony of DW4 throws up the vital question of why would she not tell Nikhil if such a sexual assault was committed on her, and on the contrary speak to Nikhil about her flirtatious conversation with the accused. The above evidence of DW4 wholly establishes and affirms the defence of the accused that whatever transpired between the accused and the prosecutrix on the night of 7/11/2013 was just drunken banter. The evidence of DW4 also corroborates the facts about the conversation between them that the accused has placed on record from inception, which he would have had no way of knowing.

165. The prosecutrix has stated that either on the 15th or 16th of November 2013, Nikhil began messaging and calling her and asking her what her plans

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were regarding attending his upcoming wedding and at the time she told him that she was in a lot of trouble and that she would probably lose her job, and in his response Nikhil made it clear that he had no idea what she was talking about and it was clear to her that he did not remember that on the night of 7/11/2013 she had told him that she was afraid of the accused and asked him to stand with her. In fact, the SMS exchange between the prosecutrix and DW4, Nikhil Agarwal clearly shows that when the prosecutrix expressed to him that she was in trouble at Tehelka, DW4 asked her "Why, what happened", by which it is apparent that Nikhil Agarwal asked the prosecutrix what happened in the messages because he was not aware of anything untoward that had happened to the prosecutrix, since the prosecutrix had cheerfully and in a state of animated excitement told him on the night of 7/11/2013 and 8/11/2013 only about her flirtatious conversation with the accused and nothing else. The below mentioned WhatsApp messages sent to DW4 by the prosecutrix on 08/11/2013 between 12:23:50 pm



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and 12:24:29 pm also do not further the prosecution case.

96314 Outgoing message- But thank god I found you

96313 Outgoing message- You can't talk to anyone about this Obviously.

96312 Outgoing message- Thanks for being there for me last night.

96311 Outgoing message-" Nikki"

166. The above messages appear clearly to have been sent by the prosecutrix to DW4 not to tell anyone that she had disclosed to him. If, as per her testimony, the prosecutrix had only told DW4 to stand by her and did not tell him anything else, what was she referring to when she said that DW4 couldn't talk about it to anyone else. Also these messages contradict the prosecutrix's claim that Nikhil was drunk and swaying and so she had said nothing else to him. DW4 had also written a letter to the Goa police with reference to the said disclosure by the prosecutrix to him and his willingness to give a statement to the police about the same, which is marked Exh. 780. To the question why he

decided to write the letter at Exh.780 to the police, DW4

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stated that after Think he was extremely busy with his wedding planning and also his honeymoon planning which was in the month of January 2014 and that he had gone to Australia for 3 weeks in the month of January 2014 and when he came back he couldn't believe what he was seeing on the news and that thereafter he met his friend Kartikay and they both discussed what had happened and that they were both very upset about what was happening and then they both decided to write a letter in the hope of shedding some light on the case, and also they wanted to tell their side of the story.

167. In his cross-examination, DW4 admitted that by the letter addressed by him to the DIG at Exh.780 he wished to convey that in his perception the prosecutrix's voice and mannerisms did not reflect any kind of trauma and that he also wished to convey in the same letter that what he heard and saw on the news was contrary to what he felt and knew about the prosecutrix and was contrary to what was told to him by the prosecutrix. However, despite receiving the said letter,



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the Investigating Officer PW70 Sunita Sawant did not take any steps to record the statement of DW4 and claimed that the letter was discussed with her superiors, DySP Sammy Tavares, SP Crime Kudtarkar and DIGP Mishra, and it was observed by them and her that the letters were doctored at the instance of the accused. PW70 also stated that it was upon discussion with her superiors that she was instructed not to record their statement. PW70 also admitted that the accused was in judicial custody after his arrest till 18.5.2014 and she does not know who were the persons meeting the accused in judicial custody. PW70 also admitted that she does not have any evidence to show that the accused was personally involved in the alleged doctored letters of Nikhil Agarwal and Kartikay Singh, and voluntarily stated that since the letters were received after filing the chargesheet, she says that the letters are doctored. To the question, whether it occurred to her at any time to contact Nikhil Agarwal and Kartikay Singh in order to find out the veracity and truthfulness of the letters and whether the letters were doctored by the accused, PW70 answered in

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the negative, saying that she did not feel it necessary. PW70 has not recorded the statement of DW4, especially when he was referred to by the prosecutrix in her first written version i.e. her email to Ishan dt. 16/11/13, which in itself was confirmation, when she received the letter from DW4, that he had clearly had a conversation with the prosecutrix moments after the incident on 7.11.2013.

168. The evidence of DW4 would amount to res gestae evidence, and is not only extremely relevant under Section 6 of the Indian Evidence Act, but also it has more weight than the evidence of PW11, PW12 and PW56, to whom the prosecutrix made the subsequent disclosure after being rebuked by DW4. The Hon'ble High Court of Bombay in "Devarsha Dnyaneshwar Parob V/S Mulgao-Sirigao-Advalpal, V K S Society Ltd; State" reported in 2010 CrLJ 4731 has held as follows: -

[10].....Witnesses are entitled to the same degree of credibility whether of the complainant or of the accused.....





Hence the deposition of DW4 has to be considered with the same degree of credibility as the witness of the complainant.

169. The decision cited by Advocate for the accused with regard to section 6 of Evidence Act of Krishan Kumar Malik v/s State of Haryana Cr.A.No.1252 of 2011, wherein as per the F.I.R. lodged by the prosecutrix she first met her mother Narayani and sister at the bus stop and Krushetra but they have not been examined, even though their evidence could have been vital as contemplated under section 6 of Evidence Act as they would have been res gestae witnesses. The purpose of incorporating section 6 in the Act is to complete the missing links in the chain of evidence of the solitary witness. They would have been the best person to lend support to the prosecution story invoking section 6 of the Evidence Act, still the prosecution did not think it proper to get their statements recorded. This shows the negligence and casual manner in which prosecution has conducted the investigation and then the trial. This lacuna has not been explained by the prosecution.

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170. In the present case also though DW4 was the first person who the victim met as per her email she has filed to delete the same which is admitted by the victim and the I.O. has failed to record his statement nor investigate as he had sent a letter also to that effect. Hence the evidence of DW4 is relevant and admissible under section 6 of the Evidence Act.

171. The arguments of Spl. PP. that letter sent by DW4 is an afterthought and sent at the behest of Tiya Tejpal is not borne out from the records. Further the said letter has to be seen in the backdrop of the fact that the prosecutrix herself had written in her email dt. 16/11/13 that she had met DW4 and had made a disclosure to him about something inappropriate. Further the argument of the Spl. PP. that Tiya Tejpal had played a pro-active role in arranging a party for DW4 has also not been admitted by DW4 and merely remains a suggestion with no evidentiary value. The submission of the Spl. P.P. that because DW4 claims that the accused is

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innocent it reveals his partisan nature, is incorrect, as DW4 has reasoned out why he has arrived at his conclusion. The decision cited by the Spl. P.P. of Suchetra Singh v/s State of Punjab AIR 2003 SC 3617 wherein it was observed that the witness closely related to the victim and consequently being a partisan witness should not be relied upon. In this case DW4 under no circumstance can be a partisan witness as it was the claim of the prosecutrix herself that she met DW4 immediately after the sexual assault, hence the decision does not apply.

172. The prosecutrix has produced on record the complaint at Exh. 733 (1) copy alongwith the email dated 18.11.2013 at 9.00a.m. sent to PW45, Shoma Chaudhary with copy to her colleagues PW11 Ishan Thanka, PW12 Shougat Das Gupta and PWS6 G. Vishnu. In the said complaint, PW1 has stated that the accused has lifted her dress up went on her knees and pulled her underwear down and he attempted to perform oral sex on her and at that moment he began to try and penetrate



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her with his fingers. However in the complaint she has not stated specifically about the accused putting his tongue in her vagina and that the accused attempted to perform and began to try and penetrate..... In the complaint, PW1 has referred that on the next day when the doors closed the accused started to try and kiss her again..... and also that within seconds of her turning around, the accused started to lift her dress and lifted it all the way up and said "You are unbelievable". However she has not stated specifically about grabbing her buttocks in the complaint which is the first version sent by her which was drafted by her recollecting all the facts which is evident from her deposition. The complaint also states about she telling Tiya that the accused has molested her on two separate occasions and she said that the accused tried to shove his tongue down her throat and then took her panties off. In the complaint the victim has also referred that she went to the room of Ishan, Shougat and told them and G. Vishnu what had occurred. It can be seen from the deposition of the prosecutrix that she herself admits that there is no admission by the accused of



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sexual assault in the apology tendered by him nor the accused has told her that he is referring to smallest thing as sexual assault. It is pertinent to note at the outset that the prosecutrix has claimed that she made a conscious effort to recollect the incidents when she narrated the incidents to her friends and she has stated that she had a clear recollection of being sexually assaulted on 7.11.2013. However, to the question how she described the sexual assault to her friends on 7/11/2013, the prosecutrix evasively stated that she does not recollect all the details that she had told them then.

173. In her said email attachment titled "Testimony" at page 0048 of Volume II, sent to PW45, Shoma, inter alia, PW1 had stated that as soon as the doors were opened, she picked up her underwear and began walking out of the elevator rapidly and the accused was still following her. Saying that she picked up her underwear means that the underwear was taken out of the body and was not just pulled down. Taking off the underwear was not possible since that would require



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lifting up of the legs of PW1. But In 161 CR.P.C. statement to police, PW1 stated that as soon as the doors were opened, she pulled up her underwear and began walking out of the elevator rapidly and the accused was still following her and asking as to what the matter was. Even, in her 164 CR.P.C statement to the Magistrate (Exb. 265), PW1 stated that just as the lift opened on the ground floor of Block 7, she pulled up her panties and walked hurriedly out of the lift blinking back tears and Mr. Tejpal was walking behind her asking as to what the matter was. There is therefore material contradiction between the complaint email sent by the prosecutrix to PW45 and the statements of the prosecutrix made under Sections 161 and 164 of CR. P. C. Such glaring contradictions cannot be expected from educated journalist like PW1 and forces the Court not to believe the incident of rape.



174. PW11, Ishan has stated that the prosecutrix said that the accused had forced his tongue into her mouth and grabbed at her underwear and that he remembers her mentioning that the accused repeatedly asked her about the colour of her underwear. PW11

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however admitted that in his 164 statement he had stated that the prosecutrix informed him that the accused had attempted to pull her panties on 7.11.2013. PW12, Shougat, has stated that the prosecutrix disclosed to them that the accused had forced his tongue down her throat and put his hand up her dress and that the accused had said something about the colour of her panties. PW12 has admitted that the police complaint which the prosecutrix would have filed as per the disclosure made by her to him would be a complaint of molestation and that besides the details which were stated by the prosecutrix no other graphic details were given by the prosecutrix to him at that time. He has further admitted that in his statement to the court he had stated that the prosecutrix had informed him that the accused tried to force his tongue down her throat and that in his statement to the court and the police he had stated that the prosecutrix informed him that the accused asked her about the colour of the underwear and not that the prosecutrix informed him that the accused said something about her panties regarding the incident of 7.11.2013.

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PW56 G. Vishnu has stated that the prosecutrix told them that the accused had shoved his tongue down her throat and that he had asked her about the colour of her panties and that he went on to pull at her panties. Therefore it can be seen from the evidence of the above witnesses that the prosecutrix had only disclosed to them that the Accused forced his tongue in her throat, grabbed or attempted to pull her underwear and asked her the colour of her underwear. There was no accusation of removing her underwear, and putting his tongue and fingers in her vagina.

175. If the rape on the prosecutrix at all happened, why did the prosecutrix not reveal or at least hint about the same to PW11, PW12 and PW56. The prosecutrix states that she claims that she received the message 'fingertips' from the accused and all were horrified, without the prosecutrix disclosing to them that the accused inserted his fingers in her vagina or that it is in relation to the said act of the accused. It is pertinent however to note that the said version disclosed by the prosecutrix to the above witnesses on 7/11/2013 is not at
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all consistent with the case of the prosecutrix, as it is not the case of the prosecutrix that the accused asked her the colour of her panties and pulled her panties. Hence the above disclosures allegedly made by the prosecutrix to the above witnesses are not corroborating the allegation of rape and are inconsistent with the version of the prosecutrix herself.

176. PW13, M. S. Raghu Amay Karnad has stated that he met the prosecutrix and she told him that she had been molested by the accused in the evening in the lift and that she was also molested by the accused on the previous day, but she did not give him any precise details about the incident. If the sexual assaults actually took place, as alleged of rape and outraging of modesty, why did the prosecutrix not mention the same to PW13 disclosing the details.



177. The prosecutrix has stated that she told her mother that the accused had sexually assaulted her but she withheld most details from her. However, PW53,

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S. Vijaylaxmi, the mother of the prosecutrix has stated that the prosecutrix disclosed to her that the accused kissed her and pulled her dress up and pulled her panties down, which is coincidentally consistent with what the prosecutrix told PW11, PW12 and PW56. There were no allegations of penetration with tongue and fingers made to her mother by the prosecutrix.

178. PW61, Sreenivasan Jain has stated that the prosecutrix told him that when she and the accused were in the lift, the accused molested her and that as far as he recalls, the prosecutrix had not informed him about the details of both the molestations.

179. Therefore, it is apparent that the first version of the prosecutrix to DW4 completely contradicted the version of the prosecutrix of sexual assault and the later versions did not corroborate her evidence in Court as to rape.

180. The prosecutrix has stated that she made a conscious effort to precisely recollect the incidents when she wrote down her recollections on 15/11/2013. The SC (Ors) 10/2014

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prosecutrix has further stated that on 15/11/2013, she had written everything down in exact order of event and sequence because as a reporter she knew that this was important should she decided to press criminal charges, and that she admits that she had written down the details of what happened in a sequence of events and that the email dated 15/11/2013 was the sequence of events as she best remembered them. She also admits of stating so as regards to her statements under sections 161 and 164 of Cr.P.C. PW56 G Vishnu has stated that the prosecutrix had very good writing skills and her knowledge of the English language was good and she could describe facts intricately. The prosecutrix admitted that the email dated 15/11/2013 at exhibit 704 was the email she sent to Masooma on 15/11/2013 in which she removed ambiguities, and claimed that it was a draft complaint of the same email attachment 'Testimony' sent to Shoma on 18/11/2013. The prosecutrix has further admitted that it is possible that the email dated 15/11/2013 which she had sent to Ishan PW11 was sent by her to Masooma, Raghu and Naresh Fernandes. The



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prosecutrix has stated that she had sent a draft of her complaint to Ishan, Shougat and Vishnu as an attachment to an email sent to them on 15/11/2013. She has stated that she does not remember but she may have sent the draft of her complaint also to Naresh Fernandes, Sreenivasan Jain, Raghu Karnad and Masooma Ranalvi on 15/11/2013. The prosecutrix has stated that she does not remember if she had produced the above attachment to her email dated 15/11/2013 before the Investigating Officer. PW70 the Investigating Officer has stated that she is aware that the prosecutrix had sent an email on 15.11.2013 containing detailed notes of the incident to PW11 Ishan, PW12 Shougat and PW56 G. Vishnu, and that the email dt. 15.11.2013 sent by the prosecutrix to Ishan PW11 had a word document attachment named "Nishita testimony.docx", but that she did not ask the prosecutrix to furnish her the email dated 15.11.2013 and to give her a print out of the word document attachment to the said email at any time. The voluntary statement of PW70, that the said attachment was sent by the prosecutrix to witness Ishan PW11 on the email



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itself again on 16.11.2013 since the witness Ishan Tankha said that he could not download it and to send it once more and that PW70 knows that the contents of "Nishita testimony.docx" is the same as that of the email sent by the prosecutrix to Ishan on 16.11.2013, cannot be accepted as the Investigating Officer has not actually read the contents of "Nishita testimony.docx" which was attached to the email dt. 15/11/13, but simply based her statement on a presumption that it would be so, since it was asked by Ishan and it was sent by the prosecutrix to Ishan.

181. PW70, the IO, Sunita Sawant has admitted that neither the prosecutrix nor any other witnesses gave her the print out of the attachment to the email sent by the prosecutrix to Ishan, Shaugat and G. Vishnu on 15.11.2013. It is also pertinent to note that the PW70 has admitted that the file size of the attachment to the email dt. 15.11.2013 "Nishita testimony.docx" is 149K, whereas the file size of "Testimony.docx" which is an attachment to the email dt. 18.11.2013 sent by the prosecutrix to Shoma PW45 is 154KB. Therefore though

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It was clear that the file "Nishita testimony.docx" had much more content than "Testimony.docx", which proved that the prosecutrix had added to her first version, the investigating officer did not take any steps to attach the same. PW70 has stated that it is true that the prosecutrix had sent the email dt. 15.11.2013 at 15:52hrs. to Masooma Ranavli Jha prior to sending it to Ishan, Shaugat and G. Vishnu, but she did not tell Masooma Jha to furnish her the copy of the email sent by the prosecutrix to Masooma Jha.

182. The prosecutrix admitted that during her deposition in Court she had access to her gmail account "nish.jha@gmail.com" through her phone. The prosecutrix further admitted that she cannot recollect whether she had deleted any emails from November 2013. When the prosecutrix was asked whether she deleted the emails containing the ambiguities sent by her to Masooma prior to 16/11/2013, she evasively claimed that she does not remember which emails were being referred to and she cannot recollect if she has deleted them. Therefore, exhibit 704 which is an email dated SC (Ors) 10/2014

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15/11/2013 sent by the witness to Shougat, Vishnu and Ishan was shown to the prosecutrix and when attention of the prosecutrix was drawn to the statement "I removed some ambiguity in this one" in the same, and was asked whether she had deleted the email which was sent by her to Masooma (prior to the email dated 15/11/13 sent to Masooma in which the witness had removed the ambiguity), she claimed that she does not recollect. Therefore the prosecutrix was very clear in her answer that she does not recollect whether the said emails of 15/11/13 were deleted, which meant that there was a possibility of all emails sent by the prosecutrix on and before 15/11/13 to Masooma and others, being available in the email account of the prosecutrix. Prior to the email in which she had removed the ambiguity, is available in her account, PW1 with typical evasiveness answered, "No, it is not. I do not carry my phone to court, I do not remember my password as it is a passkey that is generated when I need to access my email and I cannot login to it from any random computer". When the prosecutrix was questioned whether it is possible for her

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to generate the passkey and open her account and show the contents of her Gmail account nish.jha@gmail.com to the Court by 28/12/2020, she answered: "I cannot show the contents of my gmail account nish.jha@gmail.com to the court now or on the 28/12/2020 for an incident which occurred seven years ago relating to which all documents as well as her mobile phone have been surrendered to the police". PW1 stated that this is an invasion of her right to privacy especially given that she has already petitioned the High Court about the invasion of her right to privacy when her phone was used to sexually humiliate her in court by bringing up personal details irrelevant to this case. And further she has worked as a journalist for the last seven years and her account is full of sensitive details which could compromise the lives and identities of her sources and she will not give up that information to anyone including the court.



183. The statement of PW1 that she would not show the email to the Court shows that the prosecutrix wants to hide something and thus the prosecutrix cannot

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be called reliable and trustworthy and her evidence cannot be held to be of sterling quality when she refuses to submit a mere email in her possession which is relevant to the case, to the Court.

184. The prosecutrix has claimed that she physically resisted the Accused with all her force while she was being assaulted. She has claimed that she was constantly struggling against the accused while he was forcibly touching her. However, she has admitted she did not receive any physical injury out of the incident. It not believable that the prosecutrix would throw up such resistance and would not suffer any injuries on her body. The prosecutrix has also claimed that she is not aware whether the accused had received any injuries. The prosecutrix has admitted that she did not scratch or try to scratch the accused anywhere during the incident. The prosecutrix has admitted that she did not try to bang the lift walls as an instinctive response during the incident to dissuade the accused from assaulting her. It is crucial to note that the prosecutrix doesn't claim to be frozen or immobilized, she claims to be forcefully struggling,

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pushing the accused with all her might and trying to protect herself. The prosecutrix has evaded the question of whether she lifted or raised her legs at any point of time during the incident by saying she does not recollect. The prosecutrix being pushed against the side-wall of the lift is marked as an omission in the email to Ishan dt. 16/11/2013, in the Testimony dated 18/11/2013, and in her 161 CR.P.C. statement, thereby showing that it is a improvement in her evidence and therefore unreliable. Secondly, the prosecutrix has also not explained how she was pushed up against the wall. She has not claimed that the accused touched her shoulders or any other part of her body. In fact, she has stated in cross-examination that besides the parts of her body stated in her examination-in-chief, i.e. mouth while kissing, and legs and vagina while disrobing and inserting his tongue and fingers, and her shoulders after the offence was complete, the accused did not touch any part of her body. The accused in his statement under Section 313 of CR. P.C. has stated that he has not touched the victim.



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185. The prosecutrix has stated in her examination-in-chief that the accused put his tongue in her vagina. PW11, PW13 and PW56 have stated that the prosecutrix informed them that the accused had put/forced/shoved his tongue into her mouth/throat. However, the accused putting/shoving his tongue in her mouth is marked as omission in her first written versions, i.e. in the email dt.16/11/2013 and in her Testimony dt.18/11/2013, where it is stated that the accused kissed her, without describing the nature of the kiss, therefore showing an improvement in her evidence, making it unreliable.

186. The prosecutrix has stated that throughout the incident she was facing the same side i.e. right side and that the accused and she were not in a conversation inside the lift before he kissed her. She has further stated that the accused pushed her to the wall of the lift and then forcibly kissed her and at that time he was facing her. It is pertinent to note that it is not even the case of the prosecutrix that the accused held her head when he kissed her. Therefore if she was not in a conversation

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with the accused and her mouth was not open, and she was facing the accused, would it be possible for the accused to pry her mouth open to insert his tongue into her mouth? If the prosecutrix had held her jaw firmly closed how it would be possible for the accused to put his tongue into her mouth. The prosecutrix has stated that she pushed the accused as hard as she could and she did so instinctively and reflexively whenever she pushed him. If the prosecutrix pushed the accused instinctively and reflexively, why wouldn't she push the accused before he kissed her when she was pushed up against the wall or at least put her hands in between to prevent the accused from coming close. This is a narrative of extreme implausibility and it is not possible to believe that the prosecutrix, a woman who is aware of laws, intelligent, alert and physically fit, (Yoga trainer) would not push or ward off the accused if she got pushed up against the wall, especially when she was facing him and especially when she saw the accused coming uncomfortably close to her in her private space. The prosecutrix has stated that she did not move her face to any side before the accused



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advanced towards her to kiss her. Her explanation that she did not imagine that the accused would try to do such a thing is not at all believable. To the question whether the prosecutrix lowered her chin or turned her face during the incident while the accused was allegedly kissing her during the incident of 7/11/2013, she has stated that she does not recollect if she moved her chin and moved her face which is evasively answered. It is also pertinent to note that the prosecutrix has also stated that she twisted her body and turned her body away from the accused when the accused brought his face towards her and that she was constantly struggling against him. To the question whether after the accused had kissed her on the 7th and the 8th of November 2013, she had the saliva of the accused on her face, the prosecutrix claims that she does not recollect. To the question whether her lipstick got smudged due to the incidents of 7/11/2013 and 8/11/2013, she stated that she does not recall if she was wearing lipstick. There are contradictions on record about the reaction of the prosecutrix on being kissed as well. And in her cross-examination, she claims she was in a



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state of complete shock when the accused kissed her, and she did not in turn push him. However later in cross, she changed her version by saying that as soon as the accused kissed her she pushed him and begged him to stop. When asked whether in that state of shock if she spoke to the accused and pushed him during the incident of 7/11/2013, she stated that she began to plead with the accused to stop and pushed him as soon as he kissed her but she does not recall if in that precise moment she was in a state of shock.

187. The Prosecutrix has stated that she had pushed the accused after he kissed her. She has stated that she cannot recall how many times she pushed the accused but she repeatedly pushed the accused to make him stop and at one time she used both hands to push the accused and at other times she may have used one or both her hands. She has stated that she could not push him very far as he was stronger and taller. The 164 Cr.P.C. statement of the prosecutrix shows that she pushed the accused at least three times. To the question



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whether she pushed the accused when he began lifting her dress, the prosecutrix said that she pushed him when he forced himself on her. Therefore the above evidence of the prosecutrix clearly shows that she repeatedly pushed away the accused. The prosecutrix has stated that she did not warn or intimidate the accused when the accused went down on his knees as she claims that he was more powerful than her in every single way. The prosecutrix has also admitted that she did not fight back against the accused when he began to disrobe her during the incident of 7/11/2013. The voluntary statement of the prosecutrix that she was too scared of the accused and still in shock cannot be believed as she has stated that she was pushing the accused.

188. The prosecutrix has admitted that the dress worn by her on that evening was of chiffon material and that she was wearing a lining under the chiffon dress above her knees, but she does not recollect how much above the knee. She has further claimed that her dress was tight-fitting and the slip of it was also tight-fitting.

However, the CCTV footage of the guest lifts of 7/11/13
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shows her dress to be free flowing and not tight fitting. The prosecutrix has admitted that there was no tearing of her clothes. Her clothes, which are MO before the Court, also reveal that there are no tears at all to her clothes. The prosecutrix has admitted that apart from the accused catching hold of her hand and pulling her in the lift and inside the lift touching both her shoulders, he did not hold her hands in any other way during the incident. The prosecutrix has stated she does not recollect if she had caught her long dress when the accused was lifting it during the incident and voluntarily states that she was in a state of extreme shock while she was being sexually assaulted. Hence the allegation of rape and sexual assault cannot be said to have been proved by the prosecution beyond reasonable doubt.

189. It was submitted by the Spl. P.P. that in the apologies given by the accused, the accused has not denied the sexual molestation told to him by Tiya and thus has admitted the allegations made by the prosecutrix. However the sexual molestation which was told to Tiya by the Prosecutrix is not on record and Tiya is

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also not examined to know the allegations which were told to Tiya. On the other hand, the argument of the accused is that the prosecution evidence reveals that the Formal Apology was not sent by the accused but due to the pressure of the prosecutrix was written by Shoma and sent by Neena to the prosecutrix and therefore not incriminating against the accused and the prosecution failed to prove that the formal Apology was voluntary and amounted to a confession of commission of the sexual assault on the prosecutrix. Let us therefore understand as to what is confession. Ordinarily, confession by a person is an act of admitting that he has done something wrong or illegal. The Hon'ble Supreme Court in "Aghnoo Nagesia v/s State of Bihar", reported in (1996 CrLJ 100), has held as follows:-

[11] The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial

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Committee in *Pakala Narayanaswami v. Emperor* 66 Ind App 66 at p.81 : (AIR 1939 PC 47 at p. 52). Lord Atkin observed:

".....no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. e.g., an admission that the Accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

These observations received the approval of this Court in *PalvinderKaur v. State of Punjab* (1), 1953 SCR 94 at p. 104; (AIR 1952 SC 354 at p. 357). In *State of U. P. v. DeomanUpadhyaya*, (1961) 1 SCR 14 at p. 21: (AIR 1960 SC 1125 at pp. 1128-1129). Shah, J., referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

[12] Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory

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matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an Accused is to be used against him, the whole of it should be tendered in evidence and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See Hanumant Govind v. State of M. P. 1952 SCR 1091 at p. 1111: (AIR 1952 SC 343 at p. 350) and 1953 SCR 94: (AIR 1952 SC 354). The Accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the Accused where no part of his statement is self-exculpatory; and the prosecution intends to use the whole of the statement against the Accused.

[14] If proof of the confession is excluded by any provision of law such as S.24, S.25 and S.26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section under as S.27 of the Evidence Act. Little substance and content would be left in Ss. 24, 25 and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

[16] If the confession is caused by an inducement, threat or promise as contemplated by S.24 of the



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Evidence Act, the whole of the confession is excluded by S.24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by S.24. To hold that the proof of the admission of other incriminating facts is not barred by S.24 is to rob the section of its practical utility and content. It may be suggested that the bar of S.24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of S.24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section.....

190. If the email titled Personal is looked at in light of the above judgment, it will reveal that there is absolutely no admission or confession of any incriminating fact even remotely suggesting sexual assault by the accused on the prosecutrix in the aforesaid email. The word sexual assault or any of its attributes are neither implicitly nor explicitly stated in the said personal email. The email of the accused containing the alleged confession is not a reply to any previous email sent to the SC (Ors) 10/2014

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accused by the prosecutrix, containing any allegations of sexual assault, to claim that since the allegations are not denied, it amounts to admission. In fact, what is prominent in the said email is the accused reminding the prosecutrix of the conversation they had outside the lobby of Block 7, which has been admitted by the prosecutrix. The accused submits that the said email shows that even as the accused outright denied the prosecutrix's version of the incident and disputed her claims of what had happened, he offered an apology only to any discomfort she might have felt about the previously mentioned "drunken banter", which included a sexual conversation between them, while knowing that the prosecutrix had engaged in the conversation freely and enthusiastically, and that she had in fact volunteered stories about Bob Geldof and about her boyfriend Aman, that if she had decided to suddenly, post facto, for unfathomable reasons, take offence about the conversation, he was willing to offer an apology for his part in it.



191.

If the email titled Personal is looked at it

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reveals that there is no explicit admission or confession of any sexual assault on the Prosecutrix in the aforesaid email as alleged by the prosecutrix in her complaint to Shoma. The personal apology though supposed to be drafted by Shoma as stated by the prosecutrix, Spl P.P. submitted that as it is sent within 3 minutes of the formal apology and in the personal apology it is stated that *"this is not the formal apology you seek, that will follow in a few minutes. This is the informal one, for you and me"*. The witnesses PW11/Ishan Tankha, PW12/Shougat Dasgupta and PW56/G Vishnu have all stated that at the meeting that was convened by PW45/Shoma Chaudhury on 20.11.2013, they insisted that a Vishaka Guidelines Committee be constituted as demanded by PW1/prosecutrix to which PW45/Shoma Chaudhury stated that constitution of the committee was not required since the accused was not contesting the sexual assault version/account of PW1/prosecutrix which is also deposed by PW11/Ishan Tankha, PW12/Shougat and PW56/G Vishnu. PW1 has stated that PW45/Shoma Chaudhury assured her that the accused did not contest



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the sexual assault committed by him on PW1/prosecutrix.

Further, he pointed out the email at **Exhibit 733 (3)** described as a 'personal apology email' by PW45/Shoma Chaudhury, has also been labeled so. From this, It is crystal clear that the accused is the author of the email at **Exhibit 733 (2) and 766** [(page 0373 to 0375 of Volume III)] sent to PW1/prosecutrix as was intended and proposed by him in the personal email at **Exhibit 733 (3)** and the accused has chosen to describe this email as a 'formal apology email'. Thus the formal apology email sent to PW1/prosecutrix at **Exhibit 733 (2) and 766** [(page 0373 to 0375 of Volume III)] was sent by the accused is proved by the email dated 19.11.2013 at **Exhibit 707 (5) , (6) and (7)** sent by PW45/Shoma Chaudhury to the accused and to his sister PW36/Neena Tejpal Sharma. This obviously means that even assuming that PW45/Shoma Chaudhury drafted the formal apology email at **Exhibit 733 (2) and 766** [(page 0373 to 0375 of Volume III)], it was sent by the accused since this email along with others also came to be recovered at the instance of the accused under the



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Section 27 IEA recovery panchanama dated 03.12.2013 at Exhibit 375 as deposed by PW6/Siddharth Borkar and by PW70/Investigating Officer. However in the recovery Panchanama the prosecution has failed to prove that the accused made any disclosure statements regarding any emails including the email titled 'Personal' and that the accused accessed his email account at tarun@tehelka.com and took email print outs from the same. It is the case of the prosecution that on 23/11/2013 PW45 had handed over to the investigating officer several email print outs and the said emails were to her knowledge. It is also the case of the prosecution that several email print outs were handed over by the prosecutrix to the Investigating Officer on 26/11/2013. PW70/IO also admits that the said email sent by PW45/Shoma Chaudhury to the accused and a copy to the sister of the accused PW36/Neena Tejpal Sharma on 19/11/2013 at 1:37 pm 'does this work in your name' came to the knowledge of the IO for the first time during the disclosure panchanama dated 03.12.2013. Therefore it is apparent except the email sent by the Shoma to the



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accused titled 'does this work in your name' all the emails, the sender, the receiver and other details and contents of the said emails were already known to the Investigating Officer. And since all the details were within the knowledge of the Investigating Officer there cannot be valid discovery under section 27 of Indian Evidence Act and it cannot be said that there is valid disclosure and recovery and therefore the email printouts attached at the instance of the accused has no relevance under section 27 of Indian Evidence Act. Furthermore, the testimony of PW36/Neena Tejpal Sharma also confirms that the draft of the formal apology that was prepared by PW45/Shoma Chaudhury was sent to PW36/Neena Tejpal Sharma and the accused and for onward transmission to the victim. It is revealed that printouts recovered and attached at the instance of the accused during the panchanama dated 03.12.2013 indicates that the formal apology draft that was titled as "letter - - does this work in your name?" by PW45/Shoma Chaudhury was then altered before it was sent to the victim under the title "in apology" from the email address tarun@tehelka.com at **Exhibit 707 (10)**



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and (11). The accused in his statement under Section 313 Cr.P.C. has admitted that his email address/account is tarun@tehelka.com which is also the address that was used to send the informal/personal email at Exhibit 733 (3) and PW43/Prawal Srivastava confirms that the email address/account of the accused is indeed tarun@tehelka.com. It is required to state that the time interval between the personal/informal apology and the formal apology being a few minutes apart it could not be said that it has been sent by the accused to PW1/prosecutrix. The statement made by Shoma during the meeting is not binding on the accused which is made to PW11/Ishan Tankha, PW12/Shougat, PW56/G. Vishnu and PW1. Further PW70 has admitted that she interrogated the accused on 30.11.2013 with respect to his mobile which was attached under arrest panchanama and she did not interrogate the accused on 1.12.2013 and 2.12.2013 and that she interrogated the accused on 03.12.2013 in the presence of the panchas. Therefore how the Investigating Officer knew in advance that the accused would be making a voluntary statement on



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03.12.2013 without interrogation. PW6 has stated that they received a letter two to three days prior to the panchanama that they are required to stand as pancha witnesses. And thus without any disclosure made by the accused the Investigating Officer planned to conduct recovery panchanama under section 27 of Indian Evidence Act at the instance of the accused. Hence the argument that the email was sent by the accused cannot be accepted.

192. In her email to Shoma dated 19/11/13 at page 178 of Vol. 2, the prosecutrix had clearly demanded that she needed the matter to be addressed as swiftly as possible and that the apology of the accused needs to include:

1. an admission of violation of bodily integrity and trust, sexual molestation on two separate occasion despite repeatedly and clearly being asked to stop.
2. An admission of the fact that I was asked to cooperate with being molested on the basis that "it is the best way to keep my job."

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3. An admission of the fact that Mr Tejpai used his authority as my editor in chief to ask me to accompany him in the lift for a second time, despite my clear reluctance to do so, so that he could molest me once more.
4. A realisation and acceptance of the fact Mr. Tejpai's behaviour constitutes sexual harassment.

193. However, a bare reading of the alleged personal apology categorically shows that his email neither implicitly nor explicitly makes any of the admissions or confessions which PW1 demanded in the apology, or with relation to any other offence with which the accused was charged, and is clearly therefore not an apology but an attempt to assuage any discomfort the prosecutrix might have post facto felt. If at all there was admission of the sexual assault by the accused in the alleged apology there was no requirement for the prosecutrix to send the above email to Shoma demanding the alleged admissions. When asked to point out in the personal email where the Accused had admitted



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that he has committed sexual assault on her, the prosecutrix stated that in the personal apology the accused says "I am sorry at the immense distress that's been caused to you by my lapse of judgment but I want you to know its been totally devastating for me too in every possible way (and since you know Tiya and Geetan well, you would know what I am saying)", "This is for me to figure out how it went so terribly misunderstood and wrong". Further in the email, he says "I also want to clarify that yes, you did say at one point that I was your boss and I did reply 'that makes it simpler' but in the very same breath and sentence I said to you "I withdraw that straight away — no relationship of mine has anything at all, ever, to do with that". Further the prosecutrix has also stated that in the email he also says that "I had no idea that you were upset or felt that I had been even remotely non consensual until Tiya came and spoke to me the next night. I was shocked and devastated at the time. Both because you felt I had imposed on you (which had neither been my reading or intention) and because I felt I had been totally irresponsible and foolish to have anything



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furtive to do with my daughter's intimate friend. At that very moment I was filled with shame, and still am." He further says "you have...made it clear that I read it all wrong and I will not dispute it, nor underplay your anger and hurt." He further says "I ask you to forgive and forget it. I will meet your mom and apologise to her too - and Aman if you so wish." And he finally also says "my punishment has already been upon me and will probably last till my last day, Tarun." Rightly, the accused has submitted that if one reads the above sentences quoted by the prosecutrix it is apparent that in none of the said sentences the accused has referred to any sexual assault or any other criminal offence.

194. Though in her email dated 19/11/2013 to Shoma the prosecutrix had demanded an admission from the accused of sexual molestation, the prosecutrix admitted that in his apology letters the accused did not use the words sexual molestation. Her voluntary statement that the accused admitted multiple times to forcing himself on her "despite my clear reluctance" is not



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incriminating against the accused as the said phrase "despite my clear reluctance" is written in the formal apology written by PW45 and sent by PW36, and the prosecutrix has admitted that she herself suspected that the apology was drafted by Shoma. It is also important to note here that this statement in the accused's Personal email could not have referred to any kind of "sexual assault" in the lift as the prosecutrix claims, because if this assault had taken place as per her narrative, he would naturally have known of her upsetness, since her narrative claims that she shoved, pushed, pleaded with and struggled against him relentlessly. If he were referring to the alleged incident that she claims happened in the lift, why would he write that he had no idea that the prosecutrix was upset? This statement of the accused makes clear that no such episode occurred in the lift; and no such struggle, pushing, shoving, and pleading happened between them; and that he is referring to the drunken banter he acknowledges they indulged in outside Block 7 for about five minutes. Further, her statement that the accused offered to apologise to her mother and

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partner for the same certainly do not make out a case of sexual molestation, and it is clear that the prosecutrix is manipulating an interpretation to suit her case.

195. The prosecutrix was shown the email titled Personal, marked as Exh.X-3 and asked whether the words "sexual assault, sexual molestation or any other words signifying the same have been written explicitly in the same", to which she replied that the words sexual assault and the word sexual molestation are not explicitly stated in this email but there are many words signifying the same in this email. When asked from which sentences in the email titled Personal at Exh.X-3 did she infer that there are many words signifying sexual assault or sexual molestation, the prosecutrix replied stating that the sentences are as follows: "I am sorry at the immense distress that's been caused to you by my lapse of judgment, but I want you to know its been totally devastating for me too, in every possible way (and since you know Tiya and Geetan well, you would know what I am saying)". And then: "I also want to clarify that yes,



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you did say at one point that I was your boss, and I did reply 'that makes it simpler'..." And then: "I had no idea that you were upset or felt that I had been even remotely non-consensual, until Tiya came and spoke to me the next night. I was shocked and devastated at the time. Both because you felt I had imposed on you (which had neither been my reading or intention) and because I felt I had been totally irresponsible and foolish to have anything furtive to do with my daughter's intimate friend. At that very moment I was filled with shame, and still am." And then: "You have made it clear that I read it all wrong, and I will not dispute it, nor underplay your anger or hurt. This is easily the worst moment of my life..." And then: "I ask you to forgive and forget it. I will meet your mom and apologise to her too - and Aman if you so wish." And then: "My punishment has already been upon me and will probably last till my last day. Tarun".

196. That it is apparent from the above answers given by the prosecutrix, that despite there being no explicit or implicit admission of any offence in the said Personal apology. Thus, it can certainly be said

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that the said email titled Personal does not contain any confession made by the accused regarding any offence which is voluntary as PW45 and PW36 pressurised the accused to tender it which is clear from their deposition.

197. Further, the prosecutrix replied to the accused's email titled 'Personal' disputing and contradicting it, so how at the same time she is claiming that it constitutes an apology. The fact that the prosecutrix was not content with the Personal apology of the accused as it did not contain any admission as demanded by her and in fact raised a different version of the incident, is spoken of by PW45, PW53 and PW11. PW45 has stated that the prosecutrix also brought the accused's personal mail to her, they discussed it, and PW45 clearly told the prosecutrix that the accused had a different version and he was very upset that the prosecutrix had felt that he had done anything wrong to her. PW45 has stated the prosecutrix was content with the formal apology but was not happy with the Personal email. PW45 has stated that the prosecutrix had informed her that she did not agree to what was written by the

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accused in the Personal email to her. PW53 has stated that on 20/11/2013 the prosecutrix told her that the accused had sent her a personal apology email and that she was very disgusted with the contents of the Personal Apology. To the question whether the prosecutrix was disgusted with the personal apology of the accused as it did not contain any truth, she said she does not remember. PW11 has stated that on 20/11/2013 when Shoma had called him for a meeting, he informed Shoma that there were apparent differences in the version of the incident as stated by the accused and the prosecutrix and that he had also informed Shoma that It was obvious from the apology tendered by the accused that he was not accepting the accusations leveled by the prosecutrix against the accused. PW12 has stated that he read the apologies of the accused and the reply of the prosecutrix to them and that the prosecutrix was upset with the apologies given by the accused and that it is possible that the prosecutrix was upset with the apologies of the accused that the accused had not admitted the allegations made by the prosecutrix. PW12 has stated that In his

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opinion the version of the prosecutrix of the alleged incidents was not accepted by the accused.

198. Section 24 of the Indian Evidence Act reads as follows - Confession caused by inducement, threat or promise when irrelevant in criminal proceeding:-
A confession made by an Accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

(i).- The Hon'ble Supreme Court Of India (D.B.) in "*State Of Rajasthan V/S Rajaram*", reported in 2003 CrLJ 3901 has held as follows -

"18] Confessions may be divided into two classes, i.e. judicial and extra-judicial. Judicial

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confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra-judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise; (i) were they made voluntarily? And (ii) are they true? As the section enacts, a confession made by an Accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person; (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it



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is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority, it would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of



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securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the Accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R. v. Warwickshall, (1783) Leach 263]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if



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disclosure is made and threat of prosecution if it is not, (See Woodroffs Evidence, 9th Edn. Page 284). A promise is always attached to the confession-alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words 'appear to him' in



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the last part of the section refer to the mentality of the accused."

(ii).- The Hon'ble Supreme Court Of India (D.B.) in "*Gura Singh V/S State Of Rajasthan*", reported in 2001 ALLMR(Cri) 764 held as follows -

"[6] It is settled position of law that extra judicial confession, if true and voluntary, it can be relied upon by the Court to convict the Accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954 SCR 1098 : (AIR 1954 SC 322), this Court again in Maghar Singh v. State of Punjab, AIR 1975 SC 1320 : (1975 Cri LJ 1102) held that the evidence in the form of extra judicial confession made by the Accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believe the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the



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conviction can be founded on such evidence alone. In *Narayan Singh v. State of M. P.*, AIR 1985 SC 1678 : (1985 Cri L) 1862) this Court cautioned that it is not open to the Court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of M.P.*, AIR 1990 SC 2140 : (1990 Cri L) 2289) this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the Court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention



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of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in Baldev Raj v. State of Haryana, AIR 1991 SC 37 : (1990 Cri LJ 2643). After referring to the judgment in Piara Singh v. State of Punjab, AIR 1977 SC 2274 : (1977 Cri LJ 1941), this Court in MadanGopalKakkad v. Navai Dubey, (1992) 3 JT (SC) 270 : (1992 AIR SCW 1480), held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration."

199. It was argued by the advocate for the accused that there is ample evidence on record to show that the alleged personal apology was the result of inducement and promise (and implicit threat), having reference to the charge against the accused person, proceeding from a person in authority, and was sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain an advantage or avoid an evil of a temporal

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nature in reference to the proceeding against him. The above authorities cited by the advocate for the accused to support the submission made.

200. It is apparent from the evidence of PW45, Suparna (Shoma) Chaudhary that she, on receiving the email of the prosecutrix, angrily confronted the accused and the accused asserted that the prosecutrix was lying and that he and the prosecutrix had a fleeting consensual encounter, but she (PW45) went ahead and overruled his version and told the accused to extend an unconditional apology, despite his firm refusal and his contestation of the facts. PW45 also did not crosscheck the facts either of the prosecutrix or the accused, and said that she was very upset, and that as a woman and as head of the institution she felt pressured to act according to the prosecutrix's needs and to assuage her on the terms she was demanding. PW45 has also admitted that in a state of utter panic, without conducting any inquiry, and to assuage the feelings of the prosecutrix, and to act correctly as an institution, and to provide the "closure" that the prosecutrix wanted as per her email, and at the SC (Ors) 10/2014

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same time protect the institution's reputation, it was decided that the apology be sent to the prosecutrix. PW45 has further stated that it is true that one of the most important reasons to send an apology to the prosecutrix was that the prosecutrix stated that there would be a 'closure' of the matter if the apology was tendered, which is a matter of case record since it is contained in an email from the prosecutrix to PW45.

201. PW36, Neena Sharma has also stated that they were pressurizing the accused to send the apology as the prosecutrix had made it clear that the matter would be closed at the level of Tehelka once the apology was given and that they pressurized the accused as they were trying to save the reputation of Tehelka.

202. Therefore, assuming that the said Personal email was sent by the accused to the prosecutrix as claimed at the time of arguments by the Spl. PP., since it has been mentioned as sent from the Black berry mobile which is of the accused, the above evidence of PW45 and PW36 clearly shows that the personal

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apology was not sent voluntarily by the accused, but that it was sent due to the explicit pressure and intimidation by prosecutrix on PW45 to act swiftly and also due to the inducement and promise made by the prosecutrix to PW45, which in turn was communicated to the accused, that the matter would be closed at the institutional level, if the accused were to tender an apology. Hence, even assuming that the personal email at exh 733(3) was sent to the prosecutrix, the contention of the accused that the said email had been sent involuntarily and against his wish, and therefore would not be admissible against the accused, being struck by S. 24 of the Indian Evidence Act, has to be accepted.

203. Without prejudice to the above, the observations in following cases are also relevant:-

(i).- The Hon'ble Supreme Court of India in "*Vinod @ Manoj v. State of Haryana*" (Criminal Appeal No(s). 1822/2011 has held: -

"In our considered opinion, merely because extra judicial confession is proved which is a weak type of



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circumstance, the accused cannot be convicted for the offence of rape and murder".

(ii).- The Hon'ble High Court of Bombay in "*State v. Deepesh Raikar*", reported in 2008 AIMR(Cri) 2251 has held :-

[30] It is well settled that the case of the prosecution has to be tested independently of the defense version. Falsity or weakness of the defense version does not establish the case of the prosecution. The Court has to be cautious and avoid the risk of allowing mere suspicion however strong to take the place of proof. A mere moral conviction or a suspicion however grave it may be cannot take the place of proof. The distance between "may be true" and "must be true" should be fully covered by reliable evidence adduced by the prosecution.....

Even otherwise the sole extra judicial confession is not sufficient to form a basis of conviction .



204. The prosecutrix, in her examination-in-chief, claimed that she recorded her calls with PW45 on her Samsung Galaxy S2 model phone and that these conversations were copied on the Sony DVDs which were

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also submitted. It is important to note that since she failed to inform PW45 that she was recording the conversation - which means she could control anything she herself said in the conversation, but the other party to the call was left at the mercy of her manipulation. This is also a clear indicator of the calculated nature of the prosecutrix's actions.

205. Further, in her cross-examination, however, the prosecutrix appears to have a complete lapse of memory regarding other details relating to the recorded conversations. She has stated that she does not recollect if the conversation recorded by her was played through her phone at the time that the recorded conversations were made part of the panchanama; and that she does not recollect how many of the conversations she had with Shoma were recorded by her on the phone; and that she does not recollect on which dates she made the said recordings of her conversations with Shoma; and that she does not recollect whether the recorded conversations between her and Shoma were



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played at any time through her phone in her presence before the police during the investigation; and that she does not remember how many files she had copied from her phone to the DVD; and that she does not remember whether any attachment panchanama was made at the time she handed over the DVD to the police; and that she does not remember who was present at the time when she had handed over the DVD to the police; and she does not remember how many DVDs she handed over to the police; and that she does not remember what the police did with the DVDs after they were handed over to the police in her presence; and that she does not remember writing anything on the DVDs when the DVDs were handed over to the police by her; and that she does not remember whether anything was written on the DVDs when she handed them over to the police; and that she does not remember if she had written the transcripts alone or if anyone helped her to do so; and that she does not remember on which date she wrote the transcripts; and that she does not remember if she had played the conversations through her phone or on the DVDs when



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she made the transcripts; and that she does not remember whether the recordings on her phone were downloaded by the police on to a DVD in her presence. However, PW5 Ashok Naik, the pancha witness for the panchanama of the scene of offence, Exb. 369, has admitted that no voice recording was played to them from the cellphone of the prosecutrix.

206. PW45, Suparna (Shoma) Chaudhury has also stated that the police never played to her any recorded conversation between her and the prosecutrix and that the police also did not record her voice sample at any time. PW70, Sunita Sawant, the IO, has also stated that when she attached the phone of the prosecutrix, she did not play to the panchas the recorded conversation between the prosecutrix and PW45, Shoma Chaudhury through the phone of the prosecutrix. PW70 couldn't say whether the phone of the prosecutrix had the said recording of the conversation between the prosecutrix and PW45 when she attached the said phone. PW70 has admitted that she did not verify during the attachment



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panchanama dated 28/11/2013 whether the said phone had the said recordings between the prosecutrix and PW45 Shoma. PW70 claimed that she cannot recollect whether she had verified if the said phone had the App automatic call-recorder installed in the said phone. But the case diary and the chargesheet do not show that she had done such verification of whether the said app was installed in the phone. PW70 has admitted that she had not recorded the voice sample of the prosecutrix and PW45, and there is no specific reason for not recording their voice samples. PW70 claims that she had called upon the CFSL to furnish the voice recordings along with other details from the phone of the prosecutrix, however the report of CFSL does not make a mention of the voice recordings and the CFSL also did not furnish the said voice recordings to her and that she did not find out from the CFSL the reason for not furnishing to her the voice recordings from the mobile of the prosecutrix. PW70 further admitted that she did not compare the voice recordings from the phone of the prosecutrix with the voice recordings of the prosecutrix and PW45 contained in



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the DVD given to her by the prosecutrix. PW70 also admitted that she did not play the voice recordings on the phone of the prosecutrix or from the DVD to PW45. PW70 also admitted that she did not download the said conversation recorded on the phone of the prosecutrix to any other storage media. PW70 claims that there were 4 files on the said DVD but she has not recorded this fact either in the case diary or in any of the documents in the chargesheet.

207. Cumulative reading of the above evidence clearly shows that besides the bare statement of the prosecutrix, there is no evidence produced by the prosecution of the actual and original phone conversation recordings between PW45 and the prosecutrix through the phone of the prosecutrix.

208. PW70, the IO, has stated that there is no particular reason why she did not check whether there were voice recordings in the phone of the prosecutrix, and voluntarily stated that during that time the prosecutrix was having high fever and wanted to go back to her

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native place Delhi. PW70 has also admitted that she has not made any recordings in the case diary and the chargesheet papers that the prosecutrix had high fever and wanted to go back to Delhi. It is not possible to rely on the contents of the DVD and the transcripts when the primary evidence i.e. the phone of the prosecutrix does not contain such recordings. So also the possibility of the said recording being manipulated cannot be ruled out.

209. Further the Investigating Officer (PW70) did not even take the simple step of obtaining the voice sample of PW45 to establish that the voice in the conversations contained in the DVD belonged to PW45. The conversations were also not played by the prosecution in Court and PW45 was neither asked nor confronted with the said conversations. The omission to produce the actual recordings between the prosecutrix and PW45 is very vital and may be fatal. In any event, whatever may be the value of the said conversation between Shoma and the prosecutrix, the same is not relevant against the accused, as the accused is not a



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party to the said conversation, and evidence cannot be led against him about something spoken by some other person and not himself.

210. PW45, Suparna (Shoma) has stated that on 20.11.2013 the accused stepped down as Editor-in-chief because they were setting up the committee and the accused was very upset with the allegation made against him. PW45 has further stated that on 20.11.2013 Mr. Tejpal wrote a letter recusing himself as Editor-in-chief for 6 months and sent it to her. PW45 has further admitted that the accused recused himself as the Editor-in-Chief in order to enable a fair inquiry by the Vishakha committee which was in the process of being set up. However the recusal letter sent by the accused does not specifically state that the recusal is on account of inquiry but on account of the allegations made. PW36 Neena Sharma has stated that the accused recused himself to enable the Vishaka Committee to conduct a fair investigation. PW36 has further stated that it is true that Shoma and she pressurized and compelled the accused to send the atonement email to the staff of Tehelka though

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he was reluctant to send it. PW36 has further admitted that the words 'misconduct' and 'unfortunate incident' referred to in atonement email referred to does not amount to admission of the sexual assault which the prosecutrix alleged on the night of 7.11.2013 which the accused had with the prosecutrix on the night of 7.11.2013 by the accused. PW12, Shougat Dasgupta has also stated that he is aware that the accused had recused himself for a period of 6 month to facilitate inquiry.

211. Therefore, it is evident that the email titled 'Atonement' was neither an admission nor confession of any crime, but clearly a letter to Tehelka that he is recusing himself as Editor-in-Chief due to the allegations made by the prosecutrix, and therefore cannot be held to be incriminating against the accused.

212. The prosecutrix has also twisted and distorted the context in which the accused had sent the said SMS to the prosecutrix. Admittedly a SMS was sent by the accused to the prosecutrix on the night of

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7.11.2013 saying 'the fingertips'. The Arrest Panchanama of the accused Exh.377 shows that the said message was sent by the accused as evidenced through the phone of the accused at 00.16 hrs. However, due to the bad network at Grand Hyatt, which has been spoken of by several prosecution witnesses, the message reached the prosecutrix only at 1.17 hrs. The accused submits that the prosecutrix has distorted and obfuscated the intent and meaning of the said SMS in order to support her claim that it referred to the insertion of the fingers in her vagina. The prosecutrix claimed that during the time they were in the balcony, the accused sent her a text message on her phone, that said "the finger tips" and that it was around 1.30 am. and that when she finally managed to call Aman she had already shown this message to her colleagues in the balcony and they were disgusted and horrified. The prosecutrix has stated that she does not remember whether she explained the meaning of the message "the fingertips" to Ishan, Shougat and Vishnu. However, PW11, Ishan has stated that the prosecutrix did not give any explanation as regards to the SMS 'finger



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tips' and voluntarily stated that the prosecutrix just expressed shock. PW12, Shougat also stated that the prosecutrix did not explain to them the meaning of the message "finger tips" which was received by her and they also did not ask her about the same. It is also pertinent to note that the evidence of the prosecutrix, PW11, PW12 and PW56 does not reveal that the prosecutrix informed Ishan, Shougat and Vishnu that the accused inserted his fingers in her vagina. Therefore, if she had not told them that he had done so and also did not give them any explanation of the message 'the fingertips', how could they relate to the meaning and context of the said message and find themselves horrified and disgusted with the same. Though PW11 stated that the prosecutrix mentioned to him that she received an SMS from the accused with the words "finger tips", the same have been marked as omissions in his 161 and 164 statements, and he could not offer any explanation for the same. PW11 has also admitted that he did not state to the police and the JMFC that the prosecutrix had expressed shock on receiving the message. PW12 in his examination-in-chief



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has stated that the prosecutrix also informed them that she had received a text message from the Accused with the word "finger tips". However, similar to PW11, PW12 admitted that he did not inform the police and the court in his statements that the prosecutrix had informed them that she had received a text message from the accused with the words 'finger tips'. PW12 has also admitted that when his statement was recorded by the police and by the court he was instructed to state all the important facts relating to the case and whatever he found important and he could recall he stated in his statement to the police and the court. The above omission in the previous statements of PW11 and PW12 also creates a doubt and leads the Court to believe that the prosecutrix did not tell PW11 and PW12 of the said SMS on the night of 7.11.2013. It is also pertinent to note that PW56 G Vishnu has not stated that the prosecutrix informed him on the night of 7.11.2013 that she had received an SMS with the message 'the fingertips' from the accused. It is also pertinent to note that PW63 Ajachi has stated that the prosecutrix was in the balcony for about 15 minutes



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since she came before she came back into the room to charge her mobile and that the battery of the phone of the victim was dead when she came to charge her mobile. The question arises as to If the prosecutrix's phone was dead and was being charged within 15 minutes of her arrival, how would she get the fingertips message, in the company of her friends. Therefore from the cumulative reading of the above evidence, it becomes highly improbable and doubtful that the prosecutrix informed PW11 and PW12 about the said message on the night of 7.11.2013 or its alleged meaning, and therefore the question of PW11, PW12 and PW56 being disgusted about it would not arise, and It is apparent that the prosecutrix distorted the true intent and meaning and context of the said message at the time of lodging her complaint.

213. It is clear from the evidence of DW4, which clearly explains in what context the said message of fingertips would have been sent by the accused to the prosecutrix, and which is also explained by the accused In his statement under Section 313 of Cr. P. C.

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214. The accused in his 313 Cr.P.C. statement has explained that the said message was sent by him to the prosecutrix in the context of the conversation which the prosecutrix had with the accused, inter alia, about Bob Geldof, outside the lobby of Block 7 on 7.11.2013 and about the prosecutrix asking the accused to guess what she preferred, and the same has been corroborated by DW4, and the WhatsApp chat of the prosecutrix on the WhatsApp group 'woof, wag and wiggle' produced by DW4, where to a question by DW4 where the prosecutrix is first time bedding a grandpa, the prosecutrix says that there was a Geldof.

215. It was argued by the Spl. P.P. that section 6 of the Indian Evidence Act would be applicable to the evidence of the witnesses PW11, PW12, PW56, PW13, PW53, PW65, PW61 and PW15 who have corroborated the testimony of the victim in material particulars. Section 6 of the Evidence Act embodies the principle which is usually referred to as the *res gestae* and provides that facts which, though not in issue, are so



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connected with the fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places. The facts that can be proved as a part of *res gestae* must be facts other than those in question but must be linked to them.

Black's dictionary defines *res gestae* as follows :- (Latin: Things done), The events at issue or other events contemporaneous with them in evidence law, words and statements about the *res gestae* are usually admissible under hearsay exception (such as present sense impression or excited utterance). The said evidence thus becomes relevant and admissible as *res gestae* under section 6 of the Indian Evidence Act. Section 6 of the Evidence Act has an exception to the general rule whereunder hearsay evidence becomes admissible. But for bringing such hearsay evidence within the ambit of Section 6 of the Evidence Act, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. i.e. to say the statement said to



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be admitted forming part of *res gestae* must be made contemporaneously or immediately thereafter.

216. In his deposition, Ishan PW11 has stated that after joining Tehelka his relationship with the Victim became a professional relationship as a photo Editor and his interaction with her included sourcing images for her articles and at times accompanying her in person for a photo shoot. PW11 states that before joining Tehelka he knew the victim as the girlfriend and now wife of his friend Aman Sethi and she had also been 6 years Junior to him in school and he did not know her well at that time. Thus, he has contradicted the prosecutrix version that he was her friend since school and like a brother to her. PW1 claimed that she met Ishan socially even before she met Aman, and that Ishan became her close friend after Aman and she became friendly. She claimed that Ishan was her closest friend in Tehelka in 2013. The prosecutrix has stated that on the night of 7/11/2013, when she reached Goa International Centre she went to the room of her colleagues, Ishan Tankha, Shougat^{IT} Das Gupta and Ajachi Chakraborti and she called her friends

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to the balcony of the room, she told them that the accused had sexually assaulted her in the elevator of Block 7. The below mentioned WhatsApp messages sent by the prosecutrix to PW15 Harsimran Gill (Biki) on 5/11/2013 also shows that PW11 and PW12 were friends of Aman Sethi rather than of the prosecutrix.

94843 **Outgoing-** As a rule stay away from the Tehelka peeps except shougat and ishaan

94844 **Outgoing-** Both of whom are awesome and are also amus friends"

219. PW11 has stated that between November 2012 to November 2013, he had only one physical meeting with the prosecutrix, when he came to Mumbai on an assignment to take pictures for her story and that besides the above meeting, he did not meet the prosecutrix at any time in Mumbai prior to THINK 2013 and thereafter in Mumbai. PW11 further stated that the communication between him and the prosecutrix from November 2012 till THINK 2013 via phonecalls, WhatsApp, SMS and emails was mostly professional. PW11 admitted that he knows



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Aman since the year 2000 and that Aman is his close friend since his early 20s. PW11 has stated that he was interacting with the prosecutrix through emails, WhatsApp etc., as and when requirements came and that in a month he had interacted with the prosecutrix about 2 to 3 times. He has further admitted that prior to Think 2013, the prosecutrix had never discussed or told him anything very personal. PW11, contrary to the claim of the prosecutrix, stated that the prosecutrix was not close to him and that he does not know her personally and that there is no special reason why the prosecutrix chose to disclose the incident to him on the night of 7/11/2013.

217. The prosecutrix has stated that PW12, Shougat Das Gupta was her immediate boss and a trusted colleague and friend, and that she knows him since the time he joined Tehelka. However, PW12 has stated that he met the prosecutrix for the first time after about 2 months of joining Tehelka, and that he met the prosecutrix prior to THINK 2012 in Delhi on one or may be two occasions. PW12 has further stated that his interaction with the

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prosecutrix prior to THINK 2012 was purely professional in nature, and his interaction with the prosecutrix at THINK 2012 was minimal and purely professional, and that between THINK 2012 and THINK 2013 he met the prosecutrix only once in Bombay for a conference which was about 2 months prior to THINK 2013, and his interaction with her at the time was minimal and purely professional, and that after meeting her at the conference he met the prosecutrix directly at THINK 2013. He has further stated that his communication with the prosecutrix between THINK 2012 and THINK 2013, besides the one occasion that he met her in Bombay, was through phone calls and SMS, and the communication was purely professional regarding work. PW12 has further stated that he met Aman Sethi in the year 2004 as a friend of Ishan and his brother. He has further stated that he met Aman thereafter in the year 2012 in Delhi and they went for a casual drink together and then after THINK 2013. He has claimed that he was not a friend but a well-known acquaintance of Aman. However, PW65 Aman has stated that his friendship with Shougat deepened after the

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prosecutrix began reporting to Shougat. PW12 has stated that the only social occasion on which the prosecutrix was with him was when he had thrown a party for the Tehelka staff at his house somewhere at the end of November - December 2012. PW12 has admitted that there was no personal friendship between the prosecutrix and him and that they never shared any personal information with each other and that at the personal level he did not know the prosecutrix well.

218. The above evidence of PW11 and PW12 disclose that they were close friends of Aman and that the prosecutrix was not close to them and was not personally known to either of them.

219. With respect to PW56, G Vishnu, the prosecutrix has stated that G. Vishnu was also a trusted colleague and friend and that G Vishnu and she were close friends and that they discussed everything including the personal and professional. PW56 has stated that his relationship with the prosecutrix was not purely professional but they were also friends since 2011. He has

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further stated that he has interacted with the prosecutrix at office parties only and he was just a friend of the prosecutrix and not a close friend. PW56 has further stated that the personal details shared by the prosecutrix with him was about her friendship with Aman and he does not recollect any other personal information shared by the prosecutrix with him, besides her father's accident. PW56 has stated that at work the close friend of the prosecutrix was a colleague called Samia Singh. However he admitted that the prosecutrix had sent him an sms message on 23/04/2013, "Can I quote you? and may be marry you?", to which he replied on the same day "Quoting inhouse reporterhmm.....isn't that like not ok. Abt marriage, thought we have already....." and claimed that it was a joke. He stated that the meaning of the phrase "abt marriage, though we have already....." is that we are already married. PW56 has stated that after the prosecutrix came to Mumbai he had met her once in Mumbai prior to Think 2012 and he went out for drinks with the prosecutrix in Mumbai along with a friend by name of Javed. PW56 has admitted that it is possible that



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on 13/6/2013 he had been to the flat of the prosecutrix and after consuming alcohol had left at 4 am in the morning, and then voluntarily stated that it wouldn't be 4 am because he had work the next day.

220. It is pertinent to note that the prosecutrix herself had sent a message to Tiya saying "for instance I want to tell you that investigative reporter G Vishnu from Tehelka wants to get into my pants badly"?, which shows the interest G. Vishnu had in the prosecutrix. PW56 has admitted that he is in contact with the prosecutrix till date. Though the prosecutrix claims that PW56 was her friend, in any event, it is not the case of the prosecution that the prosecutrix went to the room of G. Vishnu to inform him, but that she happened to come across G. Vishnu in the corridor while going to the room of PW11, and therefore PW56 is a chance witness.

221. The prosecutrix has stated about her actions and emotions on the night of 7/11/2013 and 8/11/2013, as also of the next two days at Think, where she claimed to be distraught, in shock and trauma, in fear

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and anxiety, crying herself to sleep and shattered. Even if one allows for the implausible fact that the prosecutrix would seek out three male colleagues who were not intimate friends of hers to share details of the alleged incident while making absolutely no mention of it to her female roommate, Sunnaina and Samia Singh (her closest friend at Tehelka) or her mother, nothing can explain the absolute normalcy of her behaviour and state of mind inside the privacy of her own room given her own avowed state of mind - such that the colleague sharing this small hotel room with her discovers two weeks later that the prosecutrix claims to have been sexually assaulted on those very nights! It is also crucial to note that this also means that her roommate did not hear her speak on the phone at any point in even a mildly disturbed state so as to alert her that something was amiss with the prosecutrix when the prosecutrix has stated that she was talking to her husband nearly for more than an hour.



222. These circumstances appear to suggest very strongly therefore that the prosecutrix did not in fact

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inform PW11, PW12 and PW56 on the night of 7/11/2013 about any such incident of sexual assault at all, and that they have deposed falsely in order to support the prosecutrix, being friends of Aman, and PW56 being interested in having a relationship with the prosecutrix. This also explains the exact similarities in their 161 and 164 CR.P.C. statements, which crucially have not just similar details but also the same omissions.

223. According to the prosecutrix she met G Vishnu on the night of 7/11/2013 and disclosed the incident to him but this also is not proved by the prosecution. The prosecutrix has stated that she does not recollect clearly where she met Vishnu(PW56) on the night of 07/11/2013 after the incident at the Goa International Centre, but she thinks it was in the corridor, and further stated that she does not recollect whether Vishnu was alone in the corridor. PW56 has stated that he was standing in the corridor outside his hotel room at the Goa International Centre a little after midnight on 7/11/2013 and talking to colleagues when the prosecutrix walked past them and she looked distraught and that he called out to

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her and asked her if everything was fine and that she did not answer and went a little ahead and knocked on the room of Ishan and Shougat. He has further stated that then the prosecutrix came back and called out to him. He went to her and she told him that Tarun had stuck his tongue down her throat and that Ishan and Shougat opened the door of their room in the meanwhile and the prosecutrix and he went into their room and in the balcony of their room, the prosecutrix told them the full extent of what had happened. PW56 has stated that Vijay Pandey, Divakar and Arun Sehrawat were the colleagues he was talking to on the night of 7/11/2013 at the Goa International Centre when the prosecutrix passed him. However, the above evidence of the prosecutrix and PW56 is belied by the evidence of DW2 Vijay Pandey.

224. DW2 has stated that he had returned to Goa International Centre from Grand Hyatt on 7/11/2013 at about 11pm and after arriving at the Goa International Centre and before going to sleep, G. Vishnu, Divakar Anand and he were in a conversation outside the room and



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that they went to sleep at round 12.30 am and till the time G. Vishnu, Divakar Anand and he were out in the corridor, he had not seen the prosecutrix on the night of 7/11/2013 at the Goa International Centre. This contradicts G. Vishnu's claim that the prosecutrix crossed them looking disturbed while he was standing in the corridor with his colleagues, and that he was called away by her to join her, Shougat and Ishan in the latter's room.

225. PW11, Ishan has stated that he was sharing a room with Shougat Das Gupta and Ajachi Chakrabarti, where the prosecutrix came and disclosed to them the sexual assault on her on the night of 7/11/13. PW56 has stated that he was a roommate with Vijay and Divakar. However, PW24 Shri Khwaja Ayub Zickriya, the General Manager of The International Centre Goa in the year 2013, stated that Room No 222 was occupied by Ishan, Shougat and Vijay from 6th November, 2013 to 9th November, 2013 and room 220 was occupied by G. Vishnu, Ajachi and Syed Ahmed from 6th November, 2013 to 10th November, 2013. Therefore, documentary records available, create a doubt about whether Ishan, Shougat

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and Ajachi at all shared the same room, and it is not explained therefore how the prosecutrix, PW11 and PW12 claimed that Ajachi was sharing the room in question.

226. The prosecutrix has stated that Ajachi opened the door for her to enter the room shared by him, Ishan and Shougat and she entered the room alone when Ajachi opened the door. PW11 has, however, stated that the prosecutrix was let in to the room by Shougat and she came straight out to the balcony alone. PW56 has stated that Ishan and Shougat opened the door of their room and the prosecutrix and he went into their room together, but he does not remember who amongst Shougat and Ishan opened the door of the room. Giving a third version, PW62 Ajachi Chakraborti stated that he opened the door and showed her to the balcony where Ishan was sitting and that Vishnu came into the room soon after, and asked them where the prosecutrix was. There is absolute contradiction in the details and account given by the prosecutrix, PW11, PW12 and PW56 which create a doubt as to the prosecutrix going in their room that night, and whether conversation about any alleged sexual assault

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happened at all. There is a discrepancy about the prosecutrix talking initially only to Ishan.

227. PW11, Ishan has stated that the prosecutrix was let in to the room by Shougat and she came straight out to the balcony alone and when he saw her, he could tell that she was looking shocked and looked liked she has been crying and he held her hand and asked her if everything was alright and she sat down on the floor and started to cry intermittently and then she shook her head to say no and she said that she had been sexually assaulted by the accused after dinner in the lift of the building where Robert de Niro was staying and that she said that he had forced his tongue into her mouth and grabbed her underwear and that he was extremely shocked and upset on hearing this and that they were then joined by G Vishnu and Shougat Das Gupta on the balcony and that the prosecutrix narrated again how she was sexually assaulted by the accused and that he remembered her mentioning that the accused repeatedly asked her about the colour of her underwear. The



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prosecutrix does not state about the same in her deposition as well as the first complaint. PW11 has stated that about a few minutes after the prosecutrix started to disclose the incident to him, Shougat came into the balcony. PW11 has further stated that he does not recollect how long it was after Shougat entered the balcony that Vishnu came into the balcony. However, PW56 has stated that the prosecutrix entered the room of Ishan for the first time with him on the night of 7/11/2013 and that he went directly with the prosecutrix to the balcony without pausing in the room and he does not remember where Ishan and Shougat were in the room when he entered and does not know whether Shougat and Ishan were already in the balcony when he entered their room with the prosecutrix. Further, PW11 has stated that on the night of 7th and 8th, when the prosecutrix came to their room she was crying but she was not incoherent. He states that on those nights, when she came to the room, she was talking all over the place. PW11 has also admitted that he had stated in his statement under 164 of Cr.P.C that the prosecutrix was incoherent on both the nights of



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7th and 8th when she came to their room. He stated that he had observed that the prosecutrix was disoriented when the prosecutrix came to their room on the night of 7/11/2013 and that the prosecutrix was also disturbed. However, PW56 has stated that he had not seen the prosecutrix crying when he had seen her outside Ishan's room on 7/11/2013. PW56 has stated that the prosecutrix was not disoriented and incoherent in her speech on the night of 7/11/2013 and that neither Ishan, Shougat or he physically comforted the prosecutrix on the night of 7/11/2013. PW56 also claims to have entered the room alongside the prosecutrix, which means he could not have failed to notice had she been crying. The above evidence of PW56 G. Vishnu therefore contradicts the evidence of PW11 Ishan, about having a conversation with the prosecutrix alone in the balcony, before arrival of G. Vishnu.



228. PW12, Shougat has stated that he had a good working relationship with Shoma Chaudhury who was the Managing Editor of Tehelka. PW56, G. Vishnu has also

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stated that he had a good working relationship with Shoma and that he does not remember why they decided not to inform Shoma. To the question why he did not inform Shoma on the next day, he said that it was not his prerogative to do so. He also stated that he does not remember what the prosecutrix said when they told her to inform Shoma about the alleged assault. PW45 Shoma has also stated that Ishan, Shougat and Vishnu had easy access to her throughout THINK 2013 and she must have come across them on several occasions at THINK 2013 as they were a part of the editorial team. PW45 has stated that she was easily accessible to any member of the Tehelka staff had they wanted to meet her at any time during THINK 2013 and thereafter. None of the three witnesses are seen to have demonstrated absolutely any urgency with regard to a course of corrective action while the prosecutrix's narrative of distraughtness and tears and anxiety speaks about emotions and urgencies.



229. The evidence of PW53 the mother of the prosecutrix reveals that on 9.11.2013 the prosecutrix called her from Goa and she was crying terribly and she

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informed her over the phone that the accused, on the previous two nights i.e on the 7th and 8th November, 2013, had molested her in the lift, kissed her and pulled her dress up and pulled her panties down. According to PW53, the prosecutrix also told her that she had spoken to three of her colleagues at Tehelka and to PW65. Considering the scope of section 6 of the Indian Evidence Act, the deposition of this witness cannot be said to be admissible in terms of section 6 as the information as passed on to her by the prosecutrix on 9/11/2013 and not immediately upon the main act. PW 65 has stated that he knows Ishan Tankha who is one of his closest friend and Ishan's younger brother Akshaya was in his class and he was his best friend and therefore Ishan and he are very close and he knows Shaugat Das Gupta through Ishan and also as Shaugat started working at Tehelka he knew him through the victim. The victim had told him that she would be attending the THINK starting from 6th of November that year and her role was to chaperone actor Robert De Niro. He has also stated that after midnight in the early hours of 8th November, 2013 he received a phone



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call on Viber from the victim and she sounded very disturbed and was crying and told him that Tarun Tejpal, the Editor-in-chief of Tehelka had sexually molested her on the night of 7.11.2013 and the victim told him that she was calling from the balcony of Shaugat's room and the connection was bad and the call kept dropping. The victim told him that her phone battery was low and so he told her to use Ishan Tankha's phone. He also stated that the accused had taken her into the elevator saying "lets wake up Bob" and when she entered the accused forcibly kissed her and groped her and kept pressing the buttons of the elevator to keep it moving and put his hand inside her dress and groped and she was very traumatized, so he did not push her for more details. No details were given to him.

230. The incident on 7/11/2013 occurred at about 10.30 pm and the prosecutrix came to the room and was crying and went to the balcony and narrated the incident to PW11 at 12.30 am and according to the deposition of PW11, PW12 and G.Vishnu came later and she again narrated the incident to them. Hence the res
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gestae witness would only be PW11 to whom she disclosed the incident and not other witnesses. So also the deposition of PW65 cannot be considered as res gestae witness.

231. The Spl. P.P. referred to the recommendations of the Law commission of India in its 20th and 172 report based on which drastic amendments have been made in the Indian Evidence Act, 1872. Section 155 of the Indian Evidence Act, 1872 as originally stood contained sub clause (4) which stated that in trials for rape or attempts to commit rape, the fact that the woman on whom the alleged offence was committed is a common prostitute or that her conduct was generally unchaste is relevant. When reproduced sub clause (4) read, "*When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.*" The said sub clause (4) of Section 155 of the Indian Evidence Act, 1872 has been deleted by the Indian Evidence (Amendment) Act, 2002, significantly much prior to the Criminal Amendment Act, 2013 which came into effect post the Nirbhaya Case. The object of the SC (Ors) 10/2014





Amendment of 2002 is not to allow the defence counsel to ask the questions to the prosecutrix in a rape case about her character to impeach her credibility. In view of the Amendment of 2002, sub section (3) of Section 146 of the Indian Evidence Act, 1872 which states that when a witness is cross examined, he may be asked questions to shake his credit, by injuring his character, was not made applicable in a rape case, namely, it was held that the accused cannot be allowed to adduce any evidence to prove that the prosecutrix was having any immoral character prior to the date of occurrence. To buttress that this was the legal position post the Amendment of 2002, reference can be made to the judgment rendered in the case of *"Dilbhajan Singh vs State of Punjab"*, reported in 2004 CrLJ 3152 para 3 when quoted reads:

"...In view of the recommendations of the Law Commission of India in its 28th and 172 reports, drastic amendment has been made in the Indian Evidence Act, 1872, pertaining to the provisions where the prosecutrix is to be examined in a rape case. In this regard, two major amendments have been made by the Indian Evidence (Amendment) Act, 2002 which have been implemented by the Indian Parliament Act 4 of 2003 w.e.f 01.01.2003.

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Firstly, the following proviso has been added to Section 146 of the Indian Evidence Act: - 'Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross examination of the prosecutrix as to her general immoral character.'"

It is also held at paragraph 4 the above judgment that the other amendment of 2002 is the deletion of sub section (4) of Section 155 of the Indian Evidence Act, 1872. Thereafter at para 5 it is said that in view of the said two amendments of 2002, in a rape case it is not permissible to put questions to a prosecutrix pertaining to her general immoral character. It has also been held in the same paragraph that in a rape case, the accused also cannot be allowed to adduce any evidence to prove that the prosecutrix was having any immoral character. It is required to state that the context in which this judgment was delivered was because in that case the defence counsel wanted to put and show to the prosecutrix a blue video containing a recording in which the prosecutrix was shown to have been involved in sexual intercourse with two boys with the object to demolish her credibility and

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establish that her character was immoral. The prosecutor in the case had promptly objected to the exercise adopted by the defence in view of the specific amendments incorporated to Section 146 and 155 of the Indian Evidence Act, 1872. The trial Court upheld the objection of the Ld. Public Prosecutor and the Hon'ble High Court in its judgment (2004 CrLJ 3152 supra) while confirming the order of the Trial Court has observed at para 7 of the judgment:-

"...The sole object and purpose of the petitioner to show and put the blue video recording in which the prosecutrix is shown indulging in undesirable sexual acts, is to impeach her credibility and 'general immoral character'. However, the object of the aforesaid amendments is not to allow the defence counsel to ask the questions to the prosecutrix in a rape case, about her character and to impeach her credibility. In the present case, as per the petitioner, the video recording pertains to the year 1990-91 when the prosecutrix was a student and was of only 19-20 years old. Such kind of video recording, if shown in the Court room, will definitely amount to impeach the general character of the prosecutrix and to embarrass her in the Court, which exactly is not permissible under the law..."



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232. In the first instance, the accused in the present case is charged with committing rape under Secondly of Section 375 IPC viz. without her consent. Hence, Inherently want of consent is a cardinal element in this form of rape in which consent will always be an issue was submitted by the Sp PP. Secondly, although the stand of the accused has been that the rape accusation has been denied *simpliciter* whenever objection was raised by the prosecution founded on proviso to Section 146 and Section 53A of the Indian Evidence Act, 1872, however, the contents of the documents on record in the form of apology emails of the accused, recusal/atonement email, the plea of a conversation having sexual overtones outside the lift and even answers given to the relevant questions in the statement under Section 313 CrPC, are inconsistent with and contrary to the plea of denial *simpliciter*.



233. Reference to the 84th Report of the Law Commission on Rape and allied offences would be a definite guide to bring out the true and real meaning of the proviso to Section 146 in the current form and Section 53A

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of the Evidence Act. Para 7.15 of the Report at page 35 deals with past sexual history and it is significant that the recommendations contained in this Report are of the year 1980 at which time sub section (4) still formed part of Section 155. It has been stated at para 7.21 of the report that so far as previous sexual relations with other persons are concerned, there is strong justification for change to be effected to Section 155 (4). It has been observed in the paragraph that the case for admitting evidence relating to sexual relations with other persons is totally weak if not completely without foundation. That it seems hardly defensible in the present day to continue a legal provision where under the character of a female witness can be impeached merely because she happens to be a 'prosecutrix' in an offence of rape. It is also observed that evidence of acts of Intercourse with persons other than the accused indicates a remote or faint likelihood of the woman having consented to the particular fact. It is next observed that when a 'harlot' or a prostitute is raped, her consent at the time of the commission of the crime must be proved by evidence *aliunde* (meaning independent



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source). It is then recommended at para 7.21 that for these reasons Section 155 (4) required modification as to exclude evidence of sexual relations with persons other than the accused. At para 7.24 of the Report It is observed that there can hardly be any doubt that an unrestrained questioning on such matters can amount to the destruction and self respect of the woman. It is next observed there must be struck a balance between the demands for fair trial and the dignity of the woman and that the law should reflect an approach which protects her interests, without compromising those of fair trial. At para 7.25 it has been observed that Section 155 (4) of the Evidence Act should be confined to sexual relations with the accused and that too only when consent is in issue. At para 7.26 it has been observed that amendment to Section 155 (4) of the Evidence Act, merely would not be an adequate measure for reforming the law since it would still be permissible to give evidence about the 'character' of the female prosecutrix under the general provision in Section 146 of the Evidence Act. It was recommended therefore that the possibility of such an alternative being open to the accused



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in cross examination of the female prosecutrix in a prosecution of rape ought to be totally eliminated. With this objective it was recommended that a provision be added by way of addition to Section 146 to the effect that in a prosecution for rape or attempt to commit rape when the question at issue is the consent of a woman it shall not be permissible to adduce evidence or to put questions in the cross examination of the prosecutrix as to her general immoral character, or as to her prior sexual experience with any person other than the accused. Accordingly at para 7.27 of the report at page 38 the following subsection was recommended to be added to Section 146 of the Evidence Act:

"(4) In a prosecution for rape or to attempt to commit rape, where the question of consent, to sexual intercourse or attempted sexual intercourse is at issue it shall not be permissible to adduce evidence or put questions in the cross examination of the prosecutrix as to her general Immoral character or as to her previous sexual experience with any person other than the accused for proving such consent or the quality of consent."

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The Commission was further of the opinion that it was also necessary to exclude the possibility of evidence of general immoral character being tendered under the Sections of the Act which relate to substantive evidence and accordingly Section 53A was recommended to be inserted in the Evidence Act, which reads:-

"53A - In a prosecution for rape or attempt to commit rape, where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, evidence of the character of the prosecutrix or of her previous sexual experience with others shall not be relevant on the issue of such consent or quality of such consent"

At para 7.31 of the report at page 39 it was observed that women's organizations had suggested that the Evidence Act, should be amended suitably by providing that evidence of character of the accused shall be relevant in all cases of rape and molestation of women. The Commission however felt that since they were recommending amendment of the provision in Section 155 (4) of the Evidence Act which at that time had permitted



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evidence of the 'general immoral character' of the prosecutrix, it was not required to recommend the change as requested by the women's organization.

234. Having regard to the 84th Report of the Law Commission it is crystal clear that what was intended by the recommendations is that evidence of previous sexual experience of the prosecutrix with a person other than the accused ought to be prohibited and that it should not be permissible to adduce evidence or put questions in the cross examination of the prosecutrix as to her general immoral character in relation to any person other than the accused. The proviso to Section 146 of the Evidence Act in its current form and Section 53A therefore ought to be understood and interpreted in a manner that excludes evidence of previous sexual experience of the prosecutrix with other persons and prohibits her cross examination with regard to her general immoral character in respect of persons other than the accused. Such an interpretation would be consistent with the Hayden's Rule of interpretation viz. suppress the mischief and advance the



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remedy. The recommendation as above made by the Law Commission is also consistent with ratio of the judgment of the Hon'ble Apex Court in the case "State of UP vs Pappu alias Yunus" reported in 2005 CrLJ 335 where it has been observed at para 11 when quoted:

"Even assuming that the victim was previously accustomed to sexual intercourse that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot give licence to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in the given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone." Further in the case of *Mohd. Alam vs State* reported in 2007 CrLJ 803 it has been observed at para 45 as *"...The Trial judges must appreciate that the purpose*

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of cross examining a victim of rape is not to humiliate her but to get to the truth of the matter. Consequently, questions which have no real relevance to the issues before the Court and which are apparently to cause discomfiture, if not humiliation, to a victim of sexual offences should not be permitted. Such questions do not serve the ends of justice and it is pointless allowing any such cross examination to take place."

235. For the reasons aforementioned, the objection raised by the prosecution at pages 57 and 229 with regard to the questions posed to the PW1/prosecutrix and her answers thereto will have to be upheld and the prohibited portions found in the testimony of PW1/prosecutrix will have to be glossed over. Likewise, the objections raised by the prosecution at page 99, 100, 101, 384, 386, 390, 392, 394, 398, 400, 447, 449, 451, 454, 457, 459, 462, 464, 466, 469, 473, 475, 478, 481, 484, 487, 643, 646, 648, 650, 654, 656, 660, 663, 665, 667, 670, 674, 677, 680, 683, 685, with regard to contents of the WhatsApp messages shown to the PW1/prosecutrix and her answers thereto will have to suffer the same fate.

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236. The WhatsApp messages in the mobile of the prosecutrix which was attached were produced on record by the prosecution by making an application under Section 294 of Cr. P.C. and the accused had given no objection to the said application by not disputing the genuineness of the contents of the messages and chats therein and therefore the accused could cross examine on the said messages for the purpose of proving any fact relevant to the issue in question, except for the purpose of showing the immoral character of the victim and for the purpose of proving the consent on the basis of the character which is also admitted by the advocate for the accused at the time of arguments. Being so the WhatsApp messages at Page nos.101, 102, 103, 384, 386, 388 to 390, 391 to 392, 394, 400, 447, 449, 451, 454, 456, 457, 459, 462, 464, 466, 469, 473, 475, 478, 481, 484, 487, 643, 650, 654, 663, 667, 670 and 677 of the deposition of PW1 cannot be taken into consideration, however, not on account of consent or the character as those WhatsApp messages were shown to



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the prosecutrix as she was suppressing relevant facts and not for proving her character or consent for which the objection was raised. The said messages accordingly are glossed over.

237. The Spl. P.P. also submitted that in so far as the objections raised by the prosecution with regard to questions posed to the witnesses other than PW1/prosecutrix, PW15/Harsimran Gill and PW65/husband of PW1/prosecutrix and PW12/Shougat Dasgupta, these objections will have to be upheld in view of the prohibition contained in Section 53A of the Indian Evidence Act, 1872 and also by the proviso to Section 146 of the Indian Evidence Act, 1872 since clearly these provisions are not limited only to questions put in cross examination of the victim but the prohibition also extends to 'adducing evidence' of the general immoral character of the victim or her previous sexual experience with persons other than the accused. In this regard, it may be recalled that this Court by its order dated 31.10.2020 had earlier upheld the objections raised by the prosecution on the

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touchstone of Sections 53 A and the proviso to Section 146 of the Indian Evidence Act, 1872 and all the more reason now since the two documents referred to in the said order dated 31.10.2020 denoting that consent is in question have been amply proved and marked as Exhibit 733 (2) and (3). It is significant that this Court has also made reference to the amended Section 155 of the Indian Evidence Act, 1872 which resulted in the omission of sub section (4) in the said order dated 31.10.2020 apart from making reference to the prohibition contained in Section 53A and the proviso to Section 146 of the Indian Evidence Act, 1872. Therefore, the objections raised by the prosecution at pages 106, 109, 113, 114, 116, 118 with regard to the questions posed to PW15/Harsimran Gill and the objection raised by the prosecution at page 42 with regard to the question posed to PW65/husband of PW1/prosecutrix and the answers of the witnesses thereto will have to be upheld and the prohibited portions found in the testimony of PW15/Harsimran Gill and PW65/husband of PW1/prosecutrix will have to be glossed over. Likewise, the objections raised by the prosecution at



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pages 26, 29, 31, 34, 37, 38, 40, 42, 44, 46, 47, 48, 50, 52, 53, 55, 56, 57, 60, 61, 64, 67, 69, 71, 73, 74, 77, 79, 81, 83, 89, 95, 96, 98, 99, 101, 138, with regard to contents of the WhatsApp messages shown to PW15/Harsimran Gill and the objections raised by the prosecution at pages 17, 20, 36, 39, with regard to contents of the WhatsApp messages shown to PW65/husband of PW1/prosecutrix and the objections raised by the prosecution at page 30, with regard to contents of the WhatsApp messages shown to PW12/Shougat Dasgupta and their responses thereto will also have to suffer the same fate. Furthermore, the objections raised at pages 108 and 111 with regard to suggestions put to PW15/Harsimran Gill and at page 131 with regard to the printout of a photograph shown to PW15/Harsimran Gill will similarly have to be upheld and the responses of the witness thereto to be discarded.



238. Some of the messages which were shown to the witnesses were not for the purpose of proving the character or the consent of the prosecutrix as regards to

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allegations of rape or sexual assault but for confronting her and to show her relationship/friendship which the prosecutrix had denied or had disclosed that they are her acquaintances and also the chats as well as messages were shown to contradict facts which the prosecutrix had denied or suppressed other than her immoral character or consent. The prosecutrix, inspite of producing the messages on record which are admitted to have been sent by her or the chats, was suppressing relevant facts which are relevant for the decision in the matter. The order passed was pertaining to a particular question which was asked during the evidence of the prosecutrix. The accused is denying the entire incidents and there is no dispute raised as regards to the consent of the prosecutrix. Section 114 A of the Evidence Act lays down the presumption when the woman states in her evidence before the court that she did not consent. The specific defence raised by the accused is of drunken banter in the matter. The law laid down by virtue of the amendment cannot be disputed. Hence the argument that the consent is in dispute in this case is not acceptable.

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239. It is the case of the prosecution that the accused by pressing the buttons on the lift panel kept the lift in motion and the doors could not open and the prosecutrix was prevented from exiting from the lift which was changed to one button during evidence however the advocate for the accused submitted that the prosecution has failed to prove that the doors of the lift were prevented from opening and thus the allegations made by the prosecutrix fails. The initial version of the prosecutrix during investigation was that the Accused committed the sexual assault on her by (a) pressing buttons on the lift panel to keep the lift in circuit (i.e. in motion) (b) thereby preventing the doors from opening at any floor (meaning the lift doors never opened) (c) consequently preventing her from exiting the lift. The prosecutrix changed her version in the Court to claim that the accused did not press buttons but pressed one button on the lift panel to keep the doors closed. Therefore, in the version before the Court, the prosecutrix has claimed that (i) the accused pressed one button (ii) she does not know whether the lift was in motion or stationary and (iii) as doors of the lift

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were prevented from opening during the incident she thought that the lift was in motion. The only common thing in both versions is that the doors of the elevator absolutely did not open during the 2 minutes of the alleged offence on 7/11/2013. The scene of offence of 7/11/13 is the left guest lift of Block 7 (VVIP Block) of Grand Hyatt hotel.

240. The prosecutrix has stated in her examination-in-chief that she had done a recce of the route from the hotel reception up to the suite before Mr de Niro and his daughter arrived, which clearly means that PW1 had familiarised herself with the route as well as the lifts leading to the suite of Robert de Niro. To the suggestion that on 7/11/2013, the prosecutrix visited the lifts of Block 7 alone at 4.24 pm, 6.21 pm, 6.31 pm and 8.15 pm, (i.e. prior to the alleged sexual assault on 7/11/13), she stated that she does not recollect, but did not deny the suggestion. The CCTV footage of the guest lifts of Block 7 clearly shows that the prosecutrix used the lifts at the above said times as rightly pointed out by the advocate for the accused. The prosecutrix has also admitted that she had been to Block 7 and used the lifts

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several times in the said block after the incident during the day and night. The prosecutrix has admitted that she went to Mr. De Niro's room multiple times on 8/11/2013, whenever she was asked to, and that she might have personally operated the lift prior to the incident, but she does not remember the number of times she operated the lift prior to the incident. The prosecutrix initially stated that she did not tell her friends that the accused pressed the lift buttons and kept the lift in circuit because at that time she did not know why the doors would not open. PW56 G. Vishnu has also stated that the prosecutrix told them that the accused was pressing the buttons of the lift so that the lift remains in motion and does not stop.

241. The Prosecutrix has claimed that she made a conscious effort to recollect the incidents when she narrated the incidents to her friends. The email attachment 'nshitatestimony.docx' to the Email dated 15/11/13 which was admittedly sent by the Prosecutrix to Ishan, Shougat and G. Vishnu has not been produced by the prosecution. However, PW12 Shougat has stated that he came to know

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on 15/11/2013 from the email of the prosecutrix to him that she realised that the accused was simply pressing buttons on the lift panel to make the elevator stay in circuit, preventing it from stopping anywhere and thereby keeping the doors from opening. The prosecutrix has also admitted that she had stated in her statement to the Magistrate that she had written everything down in exact order of event and sequence because as a reporter she knew this was important, should she decide to press criminal charges. PW12 has ratified the fact that the prosecutrix was extremely good at writing and expressing facts in detail, in clear English. The prosecutrix has stated that in the email to Ishan dt. 16/11/13 Exh.408, she stated that she then realised that the accused was simply pressing the buttons on the lift panel to make the elevator stay in circuit, preventing it from stopping anywhere and not allowing the doors to open. Though the prosecutrix has stated that the email dated 16/11/13 at Exh. 408, is the same email she had sent to Ishan on 15/11/13, the prosecution has not produced any proof that both are the same, as the email attachment to the email dated

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15/11/13 sent by PW1 to Ishan has not been produced before the Court. The prosecutrix has admitted that the contents of the email sent by her to Ishan on 16/11/13 were true to her knowledge. In the email attachment titled "Testimony" emailed by the prosecutrix alongwith her complaint dated 18/11/13 to PW45, Suparna Chaudhary, the prosecutrix again reiterated that the accused was simply pressing the buttons on the lift panel to make the elevator stay in circuit, preventing it from stopping anywhere and for the doors to open. Further the prosecutrix has stated in her testimony that finally the lift stopped on the ground floor as the accused's hands were on her and could not press the button for yet another floor to keep it in circuit.



242. The letter of complaint was composed 11 days after the alleged incident, in consultation with advocates, journalists, friends, family and confidants. The Goa police took suo moto cognisance of the case and filed an FIR, and subsequently arrested the accused.

243. The above evidence clearly reveals that the
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version of the prosecutrix even at the time of sending her email attachment titled "Testimony" to PW45 on 18/11/2013, was that the accused was simply pressing the buttons on the lifts panel to make the elevator stay in circuit, preventing it from stopping anywhere and for the doors to open and that the lift stopped on the ground floor as the accused's hands were on her and therefore could not press the button for yet another floor to keep it in circuit. In the 161 Cr.P.C. statement to police recorded on 26/11/2013 and 164 Cr.P.C. statement to Magistrate recorded on 27/11/2013, the prosecutrix has for the first time merely claimed that the accused had his hands on the lift panel during the incident, without specifically saying what he did with them and how he kept the lift in circuit and the doors closed. During the Scene of Offence Panchanama, the prosecutrix again expounded in detail that the accused pressed multiple buttons on the lifts panel to make the elevator stay in circuit, preventing it from stopping anywhere and for the doors to open. The Scene of Offence Panchanama clearly discloses that the prosecutrix made a statement during the Scene of Offence

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Panchanama that she was sexually assaulted in a moving lift and the doors were closed when she was sexually assaulted. PW5, Ashok Naik, the panch witness has stated that during the Scene of Offence Panchanama, the prosecutrix had informed them that she was sexually assaulted by the accused on 7/11/2013 when the lift doors were closed and the lift was in motion and further that the prosecutrix had also told them during the Scene of Offence Panchanama that the accused by pressing the buttons of the lift had kept the lift in circuit preventing the doors from opening on any floor. PW16 Priyan has also admitted that during the Scene of Offence Panchanama, the prosecutrix had made a statement to the Investigating Officer that she was sexually assaulted by the accused on 7/11/2013 when the lift was in motion and in a moving lift. PW30, P.I. Sudiksha Naik has admitted that as on the day of the Scene of Offence Panchanama she was aware that the case of the prosecutrix was that the accused by pressing buttons in the lift was keeping the lift in circuit thereby preventing the doors from opening on any floor and thereby preventing her from leaving the lift. The only



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version known to PW70, the IO, through the prosecutrix about how the lift was operated by the accused was that the accused pressed multiple buttons on the lift panel to keep it in circuit and to keep the doors closed. PW70 has admitted the prosecutrix during the Scene of Offence Panchanama or thereafter, never told her about any other manner in which the accused had operated the lift.

244. It is clear from the above, that even until her examination-in-chief last recorded on 21/10/2019, the only version expounded by the prosecutrix about how the accused operated the lift during the incident of 7/11/13 was none other than that the accused was simply pressing buttons on the lift panel to make the elevator stay in circuit, preventing it from stopping anywhere and for the doors to open. The cross examination of PW1 continued till 12/3/2020 till which time, the prosecutrix was not cross-examined on the main incident of sexual assault and the operation of the lift. Accordingly, before the cross examination of prosecutrix again resumed on 7/12/2020 the prosecution examined PW5 Mr. Ashok Nalk (the panchanama of scene of offence pancha), PW16 Priyan
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K.S. (safety and security Manager of Grand Hyatt), PW44 Amin Jabbar (Mitsubishi Elevator Supervisor) and PW30 Sudiksha Naik (part investigation officer). PW5 in his cross-examination has stated that the lift doors opened automatically when they reached the second floor. PW16 Priyan K.S, who in the year 2013 was working as Safety and Security Manager of Grand Hyatt, admitted that the doors of the lift automatically open on reaching a particular floor without the need to press any button inside the lift and the doors of the lift open to the fullest and that the lift cannot be kept in circuit without the doors opening on every floor. PW44 has also admitted that the lift cannot be kept closed in circuit in continuous motion between all the floors by pressing the different buttons in the lift as the doors open automatically on reaching every floor. PW30 Sudiksha Naik also admitted that there are two doors to the lift which automatically open upon the lift reaching a particular floor and that it is true that the lift doors cannot be kept closed and the lift cannot be kept in circuit by pressing of buttons of the lift and they automatically open on reaching any floor.

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245. Therefore, much prior to the cross-examination of the prosecutrix on this aspect there was unequivocal evidence before the Court that the lift simply could not be kept in circuit by pressing buttons on the lift panel preventing the doors from opening at any floor, as claimed by the prosecutrix in her previous statements. When the Prosecutrix was cross-examined for the first time on the operation of the lift in December 2020, she completely reneged on her earlier version about the accused pressing buttons on the lift panel during the incident, and claimed that she saw the accused pressing a button on the lift panel but has not stated which was the one button that was pressed by the accused. The prosecutrix has stated that by the word 'circuit', she meant that the lift was kept in circulation/motion. When the prosecutrix was cross-examined when asked whether the lift was in motion and whether it was to her personal knowledge that the lift was in motion, stated that she cannot recall whether the lift was in motion and claimed that she only knows that the doors would not open, that is why she thought that the lift was in motion. However, the

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prosecutrix has admitted that she had not stated in her email to Ishan dt. 16/11/2013, in her email attachment titled Testimony dt. 18/11/2013, In her statement to the Police and the Magistrate, in the Scene of Offence Panchanama and in the supplementary statements that during the incident of 7/11/2013 she could not understand why the doors of the lift would not open and that is why she thought that the lift was in motion shows the improvement made by the prosecutrix.

246. The prosecutrix has claimed in cross-examination that she does not recollect how many times the lift moved while she was being sexually assaulted, and that she cannot say how many times the lift went up and down during the two minutes, thereby implicitly not denying the fact that the lift was in motion, and creating even more ambiguity about the lift being in motion or stationary. Further, to a question whether as a layperson she agrees that the lifts of Block 7 would take a maximum of 20 seconds to reach the 2nd floor from the ground floor, she has answered that she does not know. PW44, Amin Jabbar (Mitsubishi Elevator Supervisor) has stated that

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after the lift doors are closed it takes about 8 to 9 seconds to reach on the first floor from the ground floor and about 15 to 16 seconds to reach the second floor from the ground floor and at the maximum of 20 seconds. He has further stated that after the lift doors are closed it takes about 8 to 9 seconds to reach from the first floor to the second floor. PW44 has further admitted that if the lift is operated between the ground and the first floor the lift doors will open approximately 7 times in a span of 120 seconds approximately and that if the lift is operated between the ground and the second floor the lift doors will open approximately 5 times in a span of 120 seconds approximately and that if the lift is operated in sequence manner between the ground, first and the second floor the lift doors will open approximately, 7 times in a span of 120 seconds approximately i.e. once on the ground floor, 4 times on the first floor and twice on the second floor. The investigation officer PW70 has stated that she did not calculate during the scene of offence panchanama how long it takes for the lift to travel from the ground floor to the second floor and she cannot say whether the travel



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time is constant or it fluctuates.

247. It is apparent from the evidence of PW70, the Investigating Officer, that though the lift being in circuit was a very material aspect regarding the allegations made by the prosecutrix and the scene of offence being the lift, the Investigating Officer did not conduct any investigation into this aspect, to find out the number of times the lift could be in circuit vis a vis the travel time.

248. The CCTV footage of the guest lifts of the ground floor clearly shows that the left guest lift (the relevant one) was in motion during the 2 minutes of the alleged incident of 7/11/2013 and that the doors of the left lift opened at least twice on the ground floor. As the CCTV footage of the guest lifts of the first floor is destroyed by the Investigating Officer, one does not know how many times the lift opened on the 1st floor, though it is the case of the accused that the accused and the prosecutrix exited on the 1st floor and again re-entered on the 1st floor during the 2 minutes of the incident of 7/11/2013. The prosecutrix further stated that she does not recollect which

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button on the lift panel the accused touched first after entering the lift before the incident. She has stated that she does not recollect how the lift door opened after the incident of 7/11/2013. However, the prosecutrix has very evasively stated that she does not recollect whether she verified that the doors of the lift could be prevented from opening at any floor by pressing a button on the lift panel at anytime when she visited the lifts prior to 28/11/2013. The prosecutrix has further admitted that she did not verify even after 7/11/13 when she used the lifts of Block 7 how the doors could be kept closed for about two minutes. Admittedly, the prosecutrix in her evidence has not given any description or detail about the one button which she claims was pressed by the accused, which makes her version that one button was used by the accused to keep the doors closed absolutely doubtful. As the very foundation of the prosecution case is that the lift doors were kept closed to commit the sexual assault either by pressing multiple buttons or a single button, the most critical and defining aspect of the investigation would be to verify the actual functioning of the lift buttons and whether

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they could facilitate either the initial version or the changed version of prosecutrix.

249. The prosecutrix has claimed that during the Scene of Offence Panchanama, the police verified that the doors could be prevented from opening at any floor by pressing a certain button on the panel of the respective lifts and that the police had verified during the Scene of Offence Panchanama that the lift could be kept stationary. PW28 Mahesh Bhandari has also stated that in their presence the operation and the functioning of the lift was checked by PW16 and PW70. PW30 Sudiksha has stated that the operation of the lift was verified by the Investigating Officer in the presence of PW16 Priyan and the prosecutrix. However, the evidence of the below witnesses run contrary to the claim of the prosecutrix, PW28 and PW30.

250. PW5, Ashok Naik, the pancha to the Scene of Offence Panchanama, has stated that the Manager who was present showed them how the said lifts function. PW5 has further stated that the operation of the lift was

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checked during the Scene of Offence Panchanama and what was observed during the checking of the operation of the lift was recorded in the panchanama. However, PWS has stated that he does not remember if it was checked during the panchanama whether the lift could be kept in circuit by pressing the buttons and keeping the doors closed, and that if it was checked it would be written in the panchanama. PW5 further admitted that it is not stated in the panchanama that the lift was checked to see whether it could be kept in circuit by pressing the buttons and keeping the doors closed. He has further stated that if the alarm button was checked during panchanama it would be recorded in the panchanama, and admitted that in the panchanama it is not recorded that the alarm button and emergency button were checked.



251. PW16, the security head of the hotel at the relevant time, has stated that he showed the functioning of the lifts during the Scene of Offence Panchanama but he was not instructed by PI Sunita Sawant to give a practical demonstration of the working of

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the emergency stop button and the alarm button and the functioning of both the buttons was not checked during the Scene of Offence Panchanama, but he had verbally explained the functioning of the buttons during the Scene of Offence Panchanama and that in his presence the police did not practically verify the operation and the functioning of the lift in Block 7 on 28/11/2013. Also, PW16 has admitted that at the time of recording his statement and supplementary statement he was not asked by the Investigating Officer about the operation of the emergency stop button and the alarm button.

252. Therefore the evidence of PWS and PW16 clearly suggests that the lift buttons were not checked.

253. PW44, Amin Jabbar has further stated that he was never taken to Hotel Grand Hyatt by the IO Sunita Sawant near the lifts in Block 7, and that he was never asked by PI Sunita Sawant to provide the demonstration of the functioning and operation of the lift and the lift buttons. PW70 has also admitted that she did not depute any other police officer to verify before
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registration of the offence that the lift could be kept in circuit as stated by the prosecutrix in her Testimony to Shoma.PW70 has also stated that there is no specific reason why she did not verify whether the lift could be kept in circuit as stated by the prosecutrix in her testimony before registration of the offence. Further, PW70 has stated that during the scene of offence panchanama she did not tell the prosecutrix to show her and the panchas the buttons on the lift panel which were pressed by the accused during the incident of 7.11.2013 and that the prosecutrix also did not show her and the panchas on her own the buttons which were pressed by the accused during the incident of 7.11.2013. PW70 in cross admitted that she did not verify on 28.11.2013 during the scene of offence in the presence of panchas how the buttons on the lift panel could be pressed to keep the lift in circuit and preventing the doors from opening on any floor to facilitate commission of any crime. PW70 also admitted in cross-examination that it was not verified during the scene of offence panchanama whether the doors of the lift could be prevented from opening on any



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floor by pressing a button on the lift panel. PW70 also admitted in cross-examination that it was not verified during the scene of offence panchanama whether the lift could be kept stationery by pressing a button on the lift panel. On being shown the CCTV footage contained in file named hiv00901.mp4 from netDVR1 from Exh. P5 HD 2, PW70 admitted that she is seen in the lift at 10:42:00hrs for the first time, as per the time stamp of the footage. This clearly means that almost between 11.18 hrs to 11.32.00 hrs i.e. 14 minutes, PW70 was in the lift . PW70 has also admitted that DySP Sammy Tavares, SP O.R. Kudtarkar and DIGP Mishra were directing and supervising the investigation. PW16 KS Priyan has admitted that as per the Mitsubishi manual, the function of the emergency switch stated at page 1738 of Vol. 8 Exh.408 is that the intercom system is activated on pressing the emergency switch. PW16 had further stated that there is an emergency stop button/emergency switch in the lift and that it is true that the emergency stop button is given as a safety measure in the lift and that when the emergency stop button is pressed the lift goes to

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the closest landing/floor and stops and the doors open automatically. PW16 had further stated that the alarm button and the emergency switch button are located most prominently in the lift to enable the passengers in the lift easy access to them in case of any emergency. PW16 has stated that on pressing of the emergency stop button an audio message is played automatically in the lift assuring the passengers not to panic and to remain calm and that the lift doors will go to the closest landing and open. Therefore from the evidence of PW16, it is clear that the only function of the emergency red button is as a safety feature and on pressing the same an audio message is played automatically in the lift assuring the passengers not to panic and to remain calm and that the lift goes to the closest landing and stops and the doors open automatically. The evidence of PW16 therefore renders the prosecution case that the emergency stop button can be used to stop the lift and keep the doors closed, improbable.

254. PW44 Amin Jabbar though in examination-in-chief stated that the emergency red button can be used

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for stopping the lift at any time while it is in motion, however, further stated that if there is any sound in the lift when it is on the ground floor the red button can be used and that upon pressing of the red button the lift will immediately stop and upon pressing the same button again the lift will start. PW44 did not make any statement that the emergency red button could be used to keep the doors closed, while the lift was either in motion or stationary. PW44 has admitted that all the functions and the operation of the lifts installed in Block 7 of Grand Hyatt are mentioned in the manual of the lift at Exh.408 Vol 8 at pages 1706 to 1803 and that at page 1738 of Exh.408 Vol.8, it is stated that the lift had a facility which is an intercom system which is activated by the emergency switch which enables the passengers to communicate with the security/reception and that the intercom system allows two way communication with the rescue service. A bare reading of the Exh. 408 also reveals that the only function attributed to the red emergency switch is to activate the intercom system. Therefore, PW44 has clearly admitted that all the functions and operation of the lift are

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mentioned in the Manual at Exh. 408 and that as per the manual the only function of the emergency switch is to activate the intercom, and in view of the documentary evidence on record, which is the best evidence, the oral evidence of PW44 has to be necessarily discarded, being not borne out by the record.

255. PW70, the IO has stated that she first decided to check the operation of the emergency red button in November 2020 — a full seven years after the alleged incident and that when she went to the guest lifts of Block 7 on 12/11/20 to check the operation of the emergency red button she found the red emergency button deactivated. This clearly means that there is no evidence that when the Investigating officer checked the lift buttons, including the emergency button, any of the buttons functioned to keep the lift doors closed either with the lift in motion or stationary. PW69 has stated that the Investigating Officer did not request him at any time to take her to any of the other above establishments where the emergency red button is available to give a practical



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demonstration of the functioning of the emergency red button. Further PW70 admitted that she did not take any lift technician to any other establishments having Mitsubishi lifts installed in order to receive a demonstration of the functioning of the emergency red stop button. PW70 has also admitted that she did not ask any lift technician to re-activate the emergency red stop button of the guest lifts of block 7 of Grand Hyatt at any time to understand the functioning of the said emergency red stop button. PW70 has admitted that till date she does not have personal knowledge what function the emergency button performs in the guest lift of block 7 of Grand Hyatt. PW70 deliberately concealed empirical evidence of the true functioning of the emergency red button from the Court though available as it contradicted the prosecutrix's version and the prosecution case.



256. Further, no panchanama was conducted by the Investigating Officer during this inspection in the presence of independent witnesses and no record was made. First of all, the prosecution has not proved that

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the emergency red button with the function of keeping the doors close was connected/activated at any time in the guest lifts of Block 7. In the year 2013, either through empirical or oral evidence. Secondly, even assuming that the red emergency button is disabled now, would it establish that the function of the button in the year 2013 was to keep the doors closed and not anything else, is not proved. Thirdly, it is strange that the Investigating Officer did not know about the deactivation of the said button in the year 2014, before filing the initial chargesheet and then the first supplementary chargesheet in August, 2014. PW67 Yuvraj, the Safety Manager, Safety Environment and Health of Mitsubishi Elevators India Pvt. Ltd. has stated that he is not personally aware that the emergency switch was active in the year 2013 for the lifts in Block 7. PW67 Yuvraj also stated that he is not in possession of any document which shows that the emergency button was active in the year 2013. PW66 has admitted that the hotel is not in possession of any documents to show that the emergency red button was activated in the year 2011 and that it functioned the way

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he has stated in his examination-in-chief. The evidence of the prosecution witnesses that the emergency red button was disabled also cannot be believed. PW16 Priyan on being recalled stated that while demonstrating the use of the red button, the red button did not operate in accordance with its normal function and so when the IO asked them the reason why it was not operating normally, the Mitsubishi technician by name Durgesh who was present informed them that the Mitsubishi company were requested by the management of the Grand Hyatt hotel to disable the button after the particular incident that had happened in 2013. It is pertinent to note that PW16 has not stated that the emergency red button was disabled but that it did not operate in accordance with its normal function. PW16 (who was safety and security head of Hyatt in 2013 and is still working with the hotel) has further stated that he has no personal knowledge about who had disabled the emergency stop/reset red button and when it was done and that he was also not personally involved in the process or decision to disabling the emergency stop/reset red button. PW48 Vivek Shenvi has



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stated that during the course of the elevator inspection in Block 7, the emergency reset button was not functioning. PW70, the IO Sunita Sawant asked the reason for the said button not functioning, to which the technician Durgesh replied that the button had been disabled because of the incident of 2013 during the THiNK Fest. The said Durgesh then informed the IO that the emergency reset button of all the 33 elevators installed in the Grand Hyatt hotel have been disabled because of the incident of 2013. The Mitsubishi lift technician Durgesh, though summoned and present in Court, was not examined by the prosecution. Hence the above evidence of PW16 and PW44 is hearsay about what was stated by Durgesh in their presence and therefore not relevant. Adverse inference also has to be drawn against the prosecution for not examining Durgesh though present, that his evidence wouldn't support the prosecution case.



257. PW66 Noel Noronha has stated that in November 2013 there was an incident related to some crime against a woman in the Grand Hyatt hotel due to which there was bad publicity for the hotel with regards to

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safety of the guests and that during that time they analysed and found that there was a red button by which one could stop the elevator at any given time during motion and that because of this incident the hotel management decided to disconnect the said red button of all the elevators installed in the hotel in 2013. First of all, PW66 has not stated that he personally analysed and found that the red button could stop the elevator at any given time in motion. He said 'we analysed and found'. Who is 'we' is not known. PW66 has admitted that in his statement to the police he has not stated that they analysed and found that there was a red button by which one could stop the elevator at any given time during motion and that because of the incident of 2013 the hotel management decided to disconnect the said red button of all the elevators installed in the hotel and that in the same year soon after the incident of 2013 the management decided to disconnect the stop red button of all the elevators. Therefore the statement of PW66 is rendered wholly unbelievable. PW66 has further stated that he does not know who deactivated the red



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emergency button, nor when the said emergency red button was deactivated.

258. PW67 Yuvraj Torawane has stated that in 2014 when he went to the Grand Hyatt, Bambolim for the first time during his safety audit he noticed that the stop/reset red button which was installed in the elevator was not functioning and had been bypassed and that he inquired with his technical team Mr Amin Jabbar (PW44) who was the then technical supervisor and was told that there was some incident that happened in the hotel in the year 2013 and that at the request of the management of the hotel the red button function was bypassed because of this incident. He has further stated that he also confirmed this fact with the technical team of Grand Hyatt. PW67 Yuvraj has claimed that he came to know that the emergency button was deactivated after November 2013, as the technical supervisor Mr Amin Jabbar informed him during the safety inspection that he deactivated or bypassed the emergency stop/reset button after November 2013. Further, it is pertinent to note that Amin Jabbar (PW44), has not stated anywhere that he

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deactivated the emergency stop button at any time and that he informed PW67 of the same, and no other technical team members have been examined who have stated that they informed PW67 about the same. Hence the evidence on this aspect of PW67 is hearsay and unreliable and not borne out by any other evidence on record.

259. PW69 Vikram Vijay Pimplapure has stated that since 2018 he noticed that the red button inside all elevators installed at Grand Hyatt Goa had been disconnected or bypassed for functioning and that he had inquired with the ground maintenance team Durgesh and Manoj and they informed him that the red button had been disconnected or bypassed for functioning on the demand of the customers of the Grand Hyatt since an incident happened in 2013. PW69 Vikram has however stated that he cannot say anything to the suggestion that the emergency red button in Grand Hyatt was deactivated in November 2020 on the instructions of the IO. Further, the personnel of Mitsubishi who were involved in the alleged deactivation in the year 2013-2014 have also not



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been examined by the prosecution. PW66 has stated that he also does not remember if the personnel of Mitsubishi drew up any memorandum or made any documentation in evidence of the fact that the emergency red button was deactivated. Further, PW66 Noel Noronha has stated that he does not remember how it was communicated to Mitsubishi that the red emergency button should be deactivated. He has voluntarily stated that all communication is done generally through email for any action to be taken but he does not remember if he had sent the email to Mitsubishi to disconnect the red emergency button.

260. PW67 Yuvraj has stated that no documentation was made or created when the emergency stop/reset button was deactivated. PW67 has further stated that the annual safety inspection is done in the month of March and he has not mentioned the disabling of the red button in the Grand Hyatt elevators in his annual inspection report. Hence there is no documentary evidence that the emergency red button was disabled. However, no such email allegedly sent to Mitsubishi to disconnect the

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red button, has been produced by the prosecution. PW67 has further stated that they tried with their IT team to obtain the email but the email could not be traced because at that time there was use of desktop which was replaced by laptops and while changing the management, many key personnel, that is department managers, were also replaced. PW67 has stated that he has not received any email from Grand Hyatt for deactivating the emergency stop/reset button though he was a Safety Manager since June 2013. PW67 has admitted that Grand Hyatt is the biggest customer of Mitsubishi in Goa. Further, PW67 has stated that they cannot inform the establishments to deactivate the emergency stop/reset button as the management of the establishment has to take a decision as the liability will be on Mitsubishi as the emergency stop/reset button is a safety feature for the user. To the question whether Mitsubishi has failed to trace any other document/email pertaining to any other customer prior to 2015, PW67 has stated that they have all the documents for last 20 years from the time they started operations and this is the first time they were required to trace an email of



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a customer and failed to trace the same. PW67 answered that no hard copies are kept of any correspondence and further stated that only email correspondence hard copies are not printed and preserved.

261. If documentation was created regarding disabling of the emergency red button by Grand Hyatt and Mitsubishi, it is quite strange that all documents relating to the same would go missing both from Grand Hyatt and Mitsubishi. Hence, though the prosecution witnesses have claimed that documentation was created regarding disabling of the emergency red button, prosecution has not produced any documentary evidence to prove that the emergency button was deactivated, and more particularly in the year 2013 or 2014 following alleged the incidents, and therefore no reliance can be placed on the oral testimony of the abovesaid witnesses to that effect, besides being tainted by hearsay.



262. PW48 Vivek Shenvi, the Safety and Security Manager claimed that he had used the emergency

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button when he joined in October 2013 and that he never used the button while the lift is in motion. PW48 has further claimed that the function of the emergency button is to reset the command which was earlier given if the passenger wishes to go to another floor and not the one for which the command was given. PW48 has clearly admitted that the emergency button is not used to keep the doors closed, thereby contradicting the prosecution case that the doors can be kept closed by pressing the emergency red button. Further, there is a delay in recording the statement of PW48 i.e on 22.12.2020, and the explanation of PW70, the IO that she was busy with other office duties regarding visit of VVIP's to the State of Goa, cannot be accepted.

263. PW66 Noel Noronha has come forth with a different version and function of the emergency red button, unspoken of by PW16, PW44 and PW48. PW66 has stated that the red button has two modes, stop and reset and while in motion if one presses the stop button it will come to immediate halt and if one presses the reset button

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there are three options/scenarios that can take place. The first scenario: if the elevator has reached the landing the doors would open; the second scenario: if the reset button is pressed within 10 seconds since the stop button was pressed, it would go to the called floor (floor to which command is given) and the doors would open; and the third scenario: if the reset button is pressed after 10 seconds since the stop button was pressed it would go to the last travelled floor and the doors would open. PW66 has not stated that he pressed the emergency button and also not stated that he personally analysed the red button. Further, even assuming that what PW66 has stated is true, PW66 has not stated that the doors of the lift can be kept closed by using the emergency button and for how long. Hence from the evidence produced on record by the prosecution it cannot be said that doors of the would remain closed by pressing the button or button on the lift. Hence the case of the prosecution that doors of the lift did not open and remained closed of the lift cannot be said to be proved and being so the contention of the prosecution that by keeping the doors of the lift closed the prosecutrix



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was wrongfully confined in the lift fails. PW/1 also admits that it is not recorded in her email to Ishan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements that she was "physically restrained by the accused" during the incident of 7.11.2013. Hence the prosecution has failed to prove that the prosecutrix was wrongfully restrained in the lift by the accused. She has also deposed that she tried to open the doors of the lift which itself shows that there was no restraint.

264. The accused, in his statement under Section 313 of CR. P.C., has stated that he and the prosecutrix were not in the lift during the relevant two minutes of the incident of 7/11/2013 but had exited the lift on the first floor. He has given an absolute possible and probable account of their absence in the lift during the relevant 2 minutes of the alleged incident.

265. In order to conclusively prove that the
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accused and the prosecutrix mistakenly exited the guest lifts on the first floor of Block 7 during the incident of 7/11/13, the CCTV footage of the first floor of the guest lifts of 7/11/13 was most vital for the accused. The importance of the CCTV footage to the truth was first heralded by the accused, in Delhi, as early as 22/11/2013 itself, i.e. the very date of the registering of the FIR vehemently demanding that the police should procure the CCTV footage and that it would reveal the truth, as admitted by the witnesses below. The media statement was made by the accused to secure the CCTV footage to reveal the truth and to establish his innocence which has been confirmed by the witnesses.

266. PW11 Ishan Tankha has admitted that on 22.11.2013, the accused released a statement to the press urging the Goa Police to procure and release the CCTV footage of the alleged incident, so that the accurate version of events would stand clearly revealed. PW12 Shougat Das Gupta has admitted that on the complaint filed against the accused, the accused had issued a press



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release on 22.11.2013 urging the Goa Police to release the CCTV footage of the alleged incident so that the accurate version of the incidents stands revealed. PW22 has also admitted that he came to know through the news that the accused had issued a press release that the Goa police should immediately procure the CCTV footage of the incident from Grand Hyatt and release it to the public, but he does not remember if the press release of the accused was in the news on the 22.11.2013. PW45 has also admitted that the accused had made a press statement asking the police to procure the CCTV footage and release it to the public so that the truth surfaces and that she thinks it was made on 22.11.2013.

267. Therefore, it is obvious from the above that the accused immediately on knowing that the FIR was registered made a public press statement that the police should obtain all CCTV footage available so that the truth surfaces, knowing that the CCTV footage would reveal the truth and he would be exonerated.

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safety and security manager of Grand Hyatt, has produced hard copies of the locations of all the cameras at Grand Hyatt, Goa as well as the camera layouts alongwith the annexures found on pages 1846 to 1866 at Exbt. 413, which includes the camera outside the guest lifts on the first floor of Block 7. PW16 has stated that it is true that right from inception of the hotel, Block 7 was designated a VVIP block and all the security and safety measures were in place and further stated that once they were made aware about the massive event - Think festival - to be hosted at the hotel, they checked and double checked all security and safety measures available in the hotel and that in Block 7 the functioning and operation of all the CCTV cameras was checked and they were working properly. PW48, Vivek Shenvi, the assistant security manager of Grand Hyatt, has stated that he was regularly viewing the CCTV footage and apart from the time lag he did not find any discrepancy in the footage. PW49, Pushparaj Gaude, also the assistant security manager, PW51, Lavu Gawas, the security team leader, and PW52, Dilip Goankar, also the security team leader all of Grand



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Hyatt, have stated that besides the time lag, the operation of the CCTV cameras footage was normal.

269. Therefore, there is ample evidence to prove that there was a CCTV camera outside the guest lifts on the first floor of Block 7 and it was working normally and had been checked and rechecked prior to this event and found to be in perfect working condition.

270. PW14, M. Krishna, the Assistant Director of CSFL, Hyderabad has stated that the hard disks Ex-P5-HD1 and Ex-P5-HD2 contained in DVR can be easily removed, replaced and substituted and that the hard disks Ex-P5-HD1 and Ex-P5-HD2 are re-writable hard disks and that the digital evidence contained in the hard disks Ex-P5-HD1 and Ex-P5-HD2 can be edited and modified and replaced. PW16, Priyan Krishna Shivpalan has stated that on 21.11.2013 at 8 p.m. PW33, PSI Laxi Amonkar, DySP Mr. Sammy Tavares and PW70, PI Sunita Sawant informed him that they wanted to view the CCTV recordings immediately and thereafter he escorted them to the CCTV room and showed them the CCTV recordings of Block Numbers 3 and

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7. PW16 has further stated that on 22.11.2013 PSI Laxi Amonkar called him at around 9.30 a.m. and informed him that he will be again coming to the hotel to view the CCTV footage and on coming to the hotel at 9.45 a.m. he took PSI Laxi Amonkar to the CCTV room where PSI Amonkar asked him to show him the footage of guest house Number 7 of ground floor and second floor and PSI Laxi Amonkar viewed the footage again. PW16 has further stated that on 23.11.2013 PSI Laxi Amonkar yet again came to the hotel and again asked him to take him to the CCTV room at 9.45 a.m. and that the footage of Block number 7 (also referred to as Guest House 7) was viewed by him on the said day as well. PW16 has stated that on the 21st and 22nd November 2013 whatever the police wanted to view of the CCTV footage was played to them and viewed by them.

271. The above evidence of PW16 clearly shows that the Investigating Officer and PSI Laxi Amonkar had viewed the CCTV footage on 21/11/13 and that thereafter PSI Laxi Amonkar was regularly visiting Grand Hyatt to view the footage. No explanation at all has been given by the prosecution about the reason and need for PW70 and

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PW33 Laxi Amonkar to regularly visit the Grand Hyatt to view the CCTV footage. PW33 Laxi Amonkar has not denied the above said facts suggested to him, though he claims that he does not recollect the facts suggested.

272. PW33, PSI Laxi Amonkar has further stated that he cannot fully remember the contents of the video footage of the ground, first and second floor of Block 7 which was viewed by him. PW28, Mahendra Bhandari, the police photographer, has stated that the CCTV footage was viewed of the first, second and the ground floor in the CCTV room by them and the prosecutrix on 28/11/13 during the scene of offence panchanama. PW31, PI Praveen Gawas has also admitted that he viewed the footage of the ground, first and second floors of Block 7 from 7.11.2013 to 13.11.2013. He has further stated that he does not remember the contents of the CCTV footage of the first floor. PW34, Damodar Tari, the Audio Video Telecommunication Technician has stated that on 23/11/13 the police had viewed the CCTV footage of all the floors of Guest House 7. PW55 Mario Rebello has stated that on 29.11.2013 Priyan had stated that the DVR's of block 3

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and 7 contained the CCTV footage of the ground, first and second floors of the respective blocks. Finally, PW70, the Complainant-cum- Investigating Officer has also admitted that she viewed the CCTV footage of all the floors of block 7 of the guest lifts of 7/11/13 to 10/11/13 first on 21/11/13 and then on 28/11/13. PW70 has categorically stated that on 21.11.2013 she viewed the CCTV footage of all the floors of 7.11.2013 and 8.11.2013 of block 7. PW70 has stated that the CCTV footage of all the floors was also shown to the prosecutrix on the 28/11/13. She has further stated that she does not recollect the first floor footage of the guest lift of block 7 of 7/11/13. She has further admitted that she did not conduct any Panchanama on 21/11/2013 when she viewed the unedited CCTV footage at Grand Hyatt. In cross-examination, PW70 has admitted that she viewed the unedited CCTV footage of block 7 of first floor of 7.11.2013 after the accused and the prosecutrix entered the lift on ground floor and till they exited the lift on the second floor.



273. The above evidence, therefore, proves beyond doubt that the CCTV footage of the first floor of the
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guest lift of Block 7 of 7/11/13 existed and was viewed by all the witnesses.

274. When PW70, the IO was asked what she observed in the unedited CCTV footage during viewing of the CCTV footage of guests lifts of the first floor of block 7 from 22:33:59 to 22:36:08hrs. when she viewed the said footage on 21.11.2013 and on 28.11.2013, she claimed she cannot recollect. Similarly, it is pertinent to note that as stated above though PW31 and PW33 also viewed the CCTV footage of the first floor of the guest lifts of Block 7 of 7/11/2013, they also claimed that they do not remember the contents of the same.

275. The further course of action adopted by the PW70, the Investigating Officer makes it clear as to how she went about selectively retaining only the ground and second floor footage, and completely destroying the first floor CCTV footage of the guest lifts of Block 7. PW70 has stated that on 21.11.2013 or 22.11.2013 she may have decided that she wanted the CCTV footage to be downloaded to an external hard drive, and that she had

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orally told PI Praveen Gawas and PSI Laxi Amonkar to get the CCTV footage of block 7 downloaded from the hotel on 21.11.2013 or 22.11.2013. PW16, Priyan Krishnan Shivpalan, the safety and security manager of Grand Hyatt has stated that on 22.11.2013, after viewing the footage, PSI Amonkar requested him download the footage of Guest House no. 7 from 07.11.2013 to 11.11.2013 of the ground floor lift landing and second floor lift landing. However, this footage was downloaded belatedly on the 25/11/2013. PW31, PI, Pravin Gawas has stated that both the hard disks i.e. P2 and P3 were handed over by him to PI Sunita Sawant(PW70) on 26.11.2013. He has further stated that PW70 did not ask him why he had not asked Priyan for the footage of the first floor and the IO also did not ask him to go and collect the footage of the first floor. PW70 has claimed that she was aware on 26/11/2013 after P.I. Pravin Gawas had submitted his investigation report that he had downloaded only the CCTV footage of ground and second floor outside the guest lifts of Block 7. The site of this alleged incident Block 7 on two nights, 7.11.13 and 8.11.13 only has Ground, First and Second floors. That



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even the Second Floor and Ground Floor footage shows the accused and the prosecutrix taking the stairs from the Second Floor to the Ground floor on 7.11.13, which means that they would have had to walk down the First Floor as well, allegedly barely some seconds after the so-called incident – which also necessitated having this footage on record, as the camera would definitely capture their movement. It can be said that because the footage of the First Floor would have wholly destroyed the Prosecution's case, P70, the IO sought to keep out the relevant footage for the First Floor and render it unavailable.

276. A cumulative reading of the said evidence clearly shows that right from inception of the Investigation, before the DVR could be attached, PW70 had instructed PW31 and PW33 to download the footage only of the Ground and the Second Floor of the guest lifts. This should be in order to destroy and avoid all traces of the First Floor footage coming on record. PW16, Priyan Krishnan Shivpalan has stated that whenever the police demanded they should be shown the place of Block 7, he complied



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with the request and this was done from the 21.11.2013 itself, which means from 21/11/2013, the police have demanded that they should be shown Block 7. PW16 has admitted that after one enters the main gate there are various paths leading to Block 7 and one does not need to go through the reception area, which means that access to Block 7 can be clandestine and can go unnoticed. PW16 has stated that the DVRs are located on the first floor of each guest house in the housekeeping pantry and that the police never asked him to seal the DVR room nor did the police seal the DVR room. PW70, the Investigating Officer has agreed that she never took any steps to seal the housekeeping pantry room in which the DVR of block 7 was located. PW70 has also admitted that her investigation papers do not disclose that the housekeeping pantry room of block 7 which contained the DVR of block 7 was sealed either by Priyan or by any other person in any manner till 29.11.2013.



277. PW55 Mario Rebello, the pancha witness for the panchanama of attachment of hard discs, has stated

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there was no police officer present in guest House 7 (also called Block 7) before they arrived in Guest House 7 on 29/11/2013. It is an admitted fact that the DVR of Block 7 was attached only on 29/11/2013. PW30 Sudiksha Naik has stated that it is true that if there is any footage relating to the offence in the DVR, the DVR is to be immediately attached. PW33, PSI Laxi Amonkar has also admitted that if the Investigating Officer comes to know that there is CCTV footage in any DVR, it is common practice and clear operational procedure of the police department to attach the DVR immediately. When PW33 PSI Laxi Amonkar was asked whether there was any specific reason for not attaching the DVR on 25th November 2013 he said he had no specific instructions. PW31, PI Pravin Gawas has also stated that he did not receive any instructions from the IO on 25.11.2013 to attach the DVRs and that he was instructed by the IO to attach the DVRs on 28.11.2013 after they returned from Grand Hyatt on completion of scene of offence panchanama to the Crime Branch office and that as he received the instructions late on 28.11.2013 he did not go



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to Grand Hyatt on 28.11.2013 to attach the DVRs. PW31 has further stated that he had no practical difficulty in attaching the DVRs from 23.11.2013 to 25.11.2013, but that he had no instructions from the IO to do so. PW70 has stated that she first decided to attach the DVR's containing the CCTV footage of Block 7 after the scene of offence panchanama dated 28.11.2013. PW70 has also admitted that she knows that whenever the commission of a crime or facts preceding or following the commission of a crime are captured in the CCTV footage, the CCTV footage is a very valuable and important piece of evidence and that the footage captured by CCTV cameras are stored in digital video recorders. PW70 admitted that she did not have any difficulty in attaching the DVR of block 7 of hotel Grand Hyatt between the 22.11.2013 to 28.11.2013 and that there is no specific reason for not attaching the DVR of block 7 prior to 29.11.2013. However, to the question, whether she knows that in order to preserve incriminating CCTV footage and to prevent tampering with the same the DVR containing the CCTV footage has to be immediately attached and sealed, PW70



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claimed that immediate attachment and sealing of the DVR may not be required as they can copy the data. PW70 has also admitted that her case diaries and the charge sheet papers do not show that the attachment of the DVR at MO no. 9 Ex. P5 was informed to the court during investigation. PW70 has also stated that she cannot say anything as to why her case diaries and the charge sheet papers do not show that the attachment of the DVR at MO no. 9 Ex. P5 was informed to the court during investigation. PW70 has also admitted that her case diaries and the charge sheet papers do not show that the attachment of the DVR at MO no. 9 Ex P5 was informed to the court during investigation. PW70 has also stated that she cannot say as to why her case diaries and the charge sheet papers do not show that the attachment of the DVR at MO no. 9 Ex P5 was informed to the court during investigation.



278. The above evidence of PW16, PW55 and PW70 clearly shows that the room where the DVR of block 7 was kept gave easy access to anyone to tamper with the DVR but still the same was never sealed. The fact
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that the police viewed the CCTV footage no less than three times at least between 21.11.13 and 23.11.13 demonstrates that the vital nature of this footage was clearly evident to the IO and the investigating team in spite of which, they chose to leave the DVRs and the footage unguarded.

279. To the suggestion that he went to the Grand Hyatt on 21st, 22nd and 23rd November 2013 and went to Block 7 to the DVR room, PW33, PSI Laxi Amonkar said he does not remember, thereby not expressly denying the fact that he may have gone to the DVR room on the 21st, 22nd and 23rd November, 2013. PW33 has further stated that he does not recollect which places he had visited for the purpose of investigation on 21st to 23rd of November 2013 and that he does not remember whether he had knowledge of the DVR location of Block 7 on 21.11.2013, PW31, PI Praveen Gawas, though initially denied that he went alone to Hotel Grand Hyatt on 21st, 22nd and 23rd November 2013, however, subsequently, admitted that he had gone to Grand Hyatt at least on 23.11.2013 as the statement of butler Sandeep Rawat was recorded by him
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at Grand Hyatt on 23.11.2013. PW31 has further stated that he was aware on 25.11.2013 that the DVRs containing the CCTV footage were in Block 7 and not in the CCTV room. From the above evidence of PW31 It is again obvious that PW31 had also visited the Grand Hyatt on 23/11/2013 and was demonstrably aware at least on 25/11/2013 that the DVR was housed in Block 7. PW70, the Investigating Officer has given an evasive answer that she does not recollect whether she found out with Priyan PW16 or anyone else from hotel Grand Hyatt about the location of the DVR's containing the CCTV footage of block 7.

280. PW33, PSI Laxi Amonkar has stated that during the course of the panchanama on 29/11/13 Priyan had connected his laptop to the DVR of Guest house 7 and they had viewed the footage of the ground, first and second floor of Guest House 7 recorded from 17.7.2013 to 29.11.2013. PW31, PI Pravin Gawas has also stated that on 29.11.2013, during the panchanama, the laptop of PW16 Priyan was connected to both the DVRs in Block 3 and Block 7 and the footage of the ground, first and



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second floors of both the blocks were viewed by them. PW55, Mario Rebello, the pancha witness to the panchanama of attachment of hard discs has stated that on 29/11/13, PI requested Mr Priyan to connect his laptop to check for the data and Mr Priyan did the same and found data pertaining to the dates 17.07.2013 till 29.11.2013. PW25, Swapnil Chandwandkar, the employee of Siemens has stated that it is possible to connect a laptop to the DVR to view the footage. The above statements by PW25, PW31, PW33 and PW55 clearly prove that CCTV footage contained in the DVR could be directly accessed through a laptop and that the contents of the same could therefore be easily edited, tampered, deleted and fabricated as stated by PW14, M. Krishna, the Assistant Director of CFSL, Hyderabad.

281. If the first floor footage was viewed on 29/11/2013, where did it disappear and there is absolutely no explanation for the same from the prosecution. There is no reliable proof that the DVR was sealed on the 29/11/2013 which creates even further possibility of tampering with the DVR.

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282. PW55, Mario Rebello, the pancha witness to the panchanama of attachment of hard discs has claimed that the DVR was sealed. He has stated that the seal was not shown to them and he does not remember the description of the seal which was used on 29.11.2013. PW55 has further admitted that his signature on the cloth wrappings of both the DVRs differs with the signature on the panchanama dt. 29.11.2013. His explanation that the difference in the signature on the wrapping of the DVR is because he signed it by holding the sealed DVR in his hand whilst standing is utterly implausible, because it would be impossible for him to hold the DVR and sign the same. He has further stated that he does not remember if somebody held the DVR for him while signing on the wrapper of the DVRs. Therefore, the evidence of PW55 on the aspect of packing and sealing of the DVR and is demonstrably unreliable.



283. PW34, Damodar Tari, the Audio Video Telecommunication Technician, at page 7, has stated that when the DVR of Guest House 7 was taken by the police, SC (Ors) 10/2014

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it was in an open condition and that when the DVR was taken by the police only two policemen had come to take the DVR, thereby disproving the very presence of PW55 as a pancha witness as well as disproving sealing of the same. Besides, PW31, PI Praveen Gawas has not stated anywhere in his examination in chief that the DVR of Block 7 was sealed by him on attaching the same on 29/11/2013. Further, PW14, M. Krishna, the Assistant Director of CSFL, Hyderabad has stated that the inscription on the seal is not properly visible and therefore he cannot say what was written on the seal which was used to seal Ex.P5-HD2, thereby throwing doubts on the sealing of the DVR. With the prosecution having failed to prove the proper sealing of the DVR on the 29/11/2013, there is every possibility that the DVR was left open for further tampering even after its attachment. PW70, the Investigating Officer has admitted that in the forwarding letter dated 11/12/2013 she had requested the CFSL to furnish all the video recordings of the CCTV footage between 7/11/2013 to 11/11/2013 contained in EXP2, EXP4, EXP5 irrespective of the floors and that she

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received the video recordings of CCTV footage from CFSL pertaining to exh P5 HD1 and HD2 only of the ground floor and second floor. However, PW70 has admitted that she did not try to find out why the CFSL did not find any video recordings of the CCTV footage outside the guest lifts of Block 7 of the first floor of 7/11/2013 and 8/11/2013. The CFSL report of PW14, M. Krishna also shows that PW14 has retrieved only the CCTV video recordings or footage of the ground and second floor of 7/11/13 and not of the first floor. The DVD produced by the CFSL also admittedly contains only the CCTV video recordings or footage of the ground and second floor of 7/11/13 and not of the first floor. To the suggestion that device Ex-P5-HD2 contains only the ground floor and the second floor footage of Block 7 pertaining to 7.11.2013 to 11.11.2013, and that there was no footage in P5 HD2 of the first floor, PW14 stated that he cannot say anything. Therefore the prosecution through the CFSL has failed to bring on record the CCTV footage of the 1st floor of the guest lifts of Block 7 of 7/11/13 and no effort was made by PW70, the Investigating Officer to find out why the



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CFSL couldn't retrieve the same. The contention of the accused, that the Investigating Officer made no effort in this direction precisely because she knew very well that having tampered with the DVR and the said footage the CFSL would not succeed in retrieving the same, cannot be brushed aside lightly.

284. Further, after being directed to view and on viewing the CCTV footage from MO 9 Ex.P5-HD1 and Ex.P5-HD2 (both the hard disks of the DVR of Block 7), PW70, the Investigating Officer admitted that the files containing CCTV footage of the ground and the second floor outside the guest lift of Block 7 for the dates 7/11/2013 and 8/11/2013 are available and that the files containing CCTV footage of the first floor outside the guest lift of Block 7 for the dates 7/11/2013 and 8/11/2013 are not available. Further PW70 has admitted that in Ex. P5 the CCTV footage of the guest lift of Block 7 of first floor till 30/8/2013 is available. The Prosecution has not given any explanation for the absence of the CCTV footage of the first floor of the guest lift of



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7/11/2013 in the DVR, and therefore the only conclusion that can be drawn is that the Investigating Officer tampered with and destroyed the CCTV footage of the 1st floor guest lifts of block 7 since it would conclusively corroborate the defence of the accused.

285. PW70, the Investigating Officer, when asked for an explanation as to why the said footage of the 1st Floor was not available, stated that on 21/11/2013 and 28/11/2013 she had viewed the footage through the DVR. Also, when a request was made that the accused wishes to cross-examine PW70 by playing the CCTV footage through the DVR, the prosecution strongly objected to the same saying that the DVR is not functional. Thereafter, on a further request being made by the accused that the prosecution should be directed to repair or take other steps to play the CCTV footage through the DVR or obtain a DVR from Grand Hyatt to play the same as such DVRs are still being used by Grand Hyatt, the Prosecution yet again objected to the same. The accused thereafter did not press for the same.



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286. Since it was the case of the accused that the accused and the prosecutrix had got out on the first floor during the incident of 7.11.2013 and in view of such suggestion being put to PW70, the Investigating Officer as the defence of the accused and denied by her, it was for the prosecution to show to the court that the CCTV footage of the first floor of 7.11.2013 pertaining to the relevant time of the incident if it runs contrary to the defence of the accused. However, PW70 who claimed that she first interrogated the accused in relation with the sexual assault of 7.11.2013 on the day of his arrest on 30.11.2013, admitted that she did not record his statement on 30.11.2013. Further it was suggested to PW70 that the accused had disclosed to her during the interrogation on 30.11.2013 that he and the prosecutrix had got out of the lift on the first floor on 7.11.2013 during the incident and she has deliberately not recorded the same in order to go ahead with the faulty investigation. PW70 has, otherwise, admitted that it should be shown to the court if it runs contrary to the defence of the accused. As PW70 herself admitted that

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the defence of the accused being that the accused and the prosecutrix had got off the 1st floor during the incident of 7/11/13, if the CCTV footage of the 1st floor is contrary to the defence of the accused, the prosecution ought to have shown the said CCTV footage to the Court, as it was clearly the duty of the prosecution to play it to the Court since they alleged that the DVR contained the footage. The claim of the Ld. SP. PP. in his arguments, that PW14 M. Krishna has claimed that the DRVs examined by him contained CCTV footage data of the ground, first and second floor, has no meaning, because if he said CCTV footage was there, the question arises as to why is it not there now. The arguments of the Ld. SP.PP. that the DVR died a natural death for want of proper storage facilities in the Court property room is only an attempt to shift the blame for the non-functioning of the DVR on the Court without producing any evidence to suggest that after being taken from Grand Hyatt the DVR was in working condition. Even otherwise, if the data of the first floor was not there in the DVR due to improper storage facility, then the entire data would have died its natural death and



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not only of the first floor. Hence, the argument is absolutely uncalled for.

287. Further the arguments of the Spl. P.P. that the accused could have played his clone copy is unfounded since the same cannot have the footage, when the DVR in the Court did not have it, according to the prosecution. The arguments of the Spl. P.P. that only the CCTV of the ground and second floor would be relevant under Section 5 of the Evidence Act for the prosecution, as the case of the prosecution only relates to the ground and second floor is absolutely incorrect, since it is the defence raised by the accused and if the same can be disproved by available prosecution evidence, it was for the prosecution to disprove it and the prosecution cannot claim that it is irrelevant. In view of the defence raised by the accused, the CCTV footage of the first floor becomes absolutely relevant. It is also pertinent to note that PW54, Mr Shripad Amonkar, the Assistant Manager (IT) of Goan Hotels and Clubs Pvt. Ltd. and assigned with tasks at the project site of Grand Hyatt hotel has stated that the CCTV Footage is saved in the hard disk in the DVR. Therefore, if

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the CCTV footage is saved in the hard disk and was there while it was viewed through the DVR it had to be there in the Hard Disks when it was viewed by PW70, the Investigating Officer through the hard disk reader. Yet, there is no explanation or attempt on part of either the IO and her team or the Prosecution to investigate how this footage suddenly disappeared from the hard disks. Till the last date of hearing, the prosecution has not shown the CCTV footage of the 1st floor to the Court, which only goes to show that either the CCTV footage has been destroyed by the Investigating Officer as it corroborates the defence of the accused or that the CCTV footage is in the DVR and that it confirms the defence of the accused.

288. The arguments of the Spl. P.P. that the accused has taken a plea of alibi in his defence is absolutely incorrect. The plea of alibi relates to a defence wherein the accused claims he was not present at the scene of crime with the prosecutrix but was elsewhere. In the present case, the accused has not claimed that he was not in Block 7 or with the prosecutrix at the relevant time, and has claimed that the accused and the

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prosecutrix had got out on the first floor before exiting on the second floor. This defence cannot be called a plea of alibi. Section 106 of the Evidence Act would apply when the facts are exclusively to the knowledge of the accused and it is impossible for the prosecution to prove it which is not also the case here. The below mentioned decision cites the said proposition. The Hon'ble Supreme Court Of India (D.B.) in "*Murlidhar v/s State Of Rajasthan*" reported in 2005 (11) SCC 133 has held as follows:

[21] The judgment of Vivian Bose, J. in Shambu Nath Mehra v. State of Ajmer lays down the legal principle underlying the shifting of burden of proof under Section 106 of the Evidence Act thus (vide para 38) :

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are



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pre-eminently or exceptionally within his Knowledge.

[22] In our judgment, the High Court was not justified in relying on and applying the rule of burden of proof under Section 106 of the Evidence Act to the case. As pointed out in Mir Mohammad Omar (supra) and Shambu Nath Mehra (supra), the rule in section 106 of the Evidence Act would apply when the facts are "especially within the knowledge of the accused" and it would be impossible, or at any rate disproportionately difficult for the prosecution to establish such facts, "especially within the knowledge of the accused."

289. PW31, PI Pravin Gawas has admitted that hash value is generated at the time of attachment of any electronic storage media for future reference and to preserve the authenticity of the contents of the storage media and to avoid tampering. PW14 M. Krishna has stated that the hash value is a system by which the digital evidence contained in the storage media device can be identified for future reference and is used for the preservation of digital evidence and for ensuring the integrity of digital evidence since if the contents of the digital evidence are changed, the hash value also

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changes. Thus, the hash value is a vital part of the process of attaching digital evidence since it is an electronic footprint that can certify to any changes, tampering or manipulation of the evidence. PW14 has further admitted that the police at the time of seizure of any storage device containing digital evidence has to generate its hash value to maintain the integrity of the contents of the electronic evidence. He has further admitted that unless the police sends the hash value of the original device sent to him, he cannot say if the contents of the electronic evidence have been tampered with or not. PW31 has stated that he had told Mr Priyan to generate the hash value before handing over the hard disk to him on 25/11/13 and that the hash value was generated by Mr. Oscar D'Souza. However, though he instructed Oscar D'Souza to generate hash value for the downloaded footage, he has admitted that he did not instruct Mr Priyan to generate hash value of both the DVRs before they were attached on 29/11/13. He has stated that there is no specific reason for not asking Mr Priyan to generate the hash value of both the DVRs



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before attaching them. Surprisingly, PW70, the Investigating Officer has stated that she does not know the meaning of Hash Value. But PW70 admitted that she took the assistance of personnel from the police department at the time of collection of electronic evidence and those are PI Rajesh Job and Oscar D'Souza. PW70 has admitted that she knew when PI Praveen Gawas conducted attachment of the downloaded footage on 25.11.2013 that he had generated the hash value for the downloaded footage through Oscar D'Souza and that she did not ask PI Praveen Gawas why he did not generate the hash value of the contents of the DVR at the time of attachment of the DVR. PW14 has stated that he has not received the hash value of any of the devices sent to him for examination by the police. To the suggestion that all the exhibits sent to him contained tampered digital evidence, PW14 M. Krishna stated that he cannot say anything. PW14 M. Krishna has stated that when the footage is of a particular date the files stored in the DVR should also indicate that they were created on the same date. PW14 M. Krishna has stated that the 'file



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created date' shows the date of the creation of the file in a particular storage media. PW14 has voluntarily stated that if the dates are properly set in the DVR, however, there was no evidence that the dates were properly set in the DVR. PW54 Mr Shripad Amonkar who has stated that the date which is seen in the CCTV footage is the system date of the DVR and the files which are saved in the hard disk will be saved as per the system date, also disproves the voluntary statement of PW14. It is pertinent to note that there is no evidence on record which proves that the DVR date was properly set in the DVR. PW18 has stated that the date of creation of a file is the date when the file is first created and the last written date would be the date when the file was last edited. All this becomes crucial when it is seen that the file creation dates of the files contained in Ex.P5-HD1 and Ex.P5-HD2 show 23 November, 2009 and not 2013. This discrepancy has again not been addressed by the prosecution.



290. PW5, Ashok Naik, the pancha witness for the panchanama of the scene of offence has stated that it

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takes about 1 minute walking time to go from the lift on the second floor to the room of Robert de Niro. PW16, Priyan Krishnan Shivpalan has stated that if one walks from the lift on the 2nd floor to the suite of Mr. Robert de Niro and comes back, it would take little over 1 minute. PW70, The Investigating Officer has stated that it would take about 2 minutes to walk from the lift on the second floor to the suite of Mr. Robert De Niro and come back. Therefore on preponderance of probability, the case of the accused stands fortified that it takes about 2 minutes to enter the lift on the ground floor, walk to the end of the corridor on the First Floor, and come back and exit on the 2nd floor.

291. The prosecutrix further claims that the accused once again sexually assaulted her in the lift of Block 7 of the Grand Hyatt on the very next night of 8/11/2013 by intercepting her to stop and told her to accompany him as they have to get something from Bob's room. The CCTV footage shows the prosecutrix waiting in a white colour car in the parking foyer of Block 7 and then walks out and enters block 7 and also the

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accused and the prosecutrix entering the lift. It is the Prosecutrix's contention that she was traumatised, shocked, shattered and in a state of anxiety and fear after the accused had unexpectedly attacked her inside the lift the previous night, and that she had, at that time, entered the lift with him in complete trust since she had no reason prior to that to be scared of him. However, according to the prosecutrix, in that encounter, she was trapped by him in an elevator that he managed to stall, whose doors refused to open, and which she could not get moving; she was then violated by him and she struggled against him, shoved and pushed him, pleaded with him but it was like talking to a deaf man. The prosecutrix on the next day accompanies the same assaulter alone into the lift in the same block where she had been assaulted on the previous day. It is crucial to note that while in her complaint PW1 had stated that he grabbed her wrist and pulled her in, the CCTV footage shows that he had not touched her at all. But she not only accompanies him, she first follows him to the lift, and then waits alongside him outside the lift while he



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finishes chatting with a guest who he knows and whom she also recognises as the celebrated photographer Rohit Chawla and then they enter the lift.

292. According to the prosecutrix, the accused seemed to know how to stall the elevator at his will and she has also stated that she was afraid that he would try to take her into a room this time. Despite this so-called fear, PW1 chose to follow him back into the elevator and does not use any possible escapes that are available to her. PW1 states that the CCTV footage contained in MO no.19 the accused did not make any physical contact with her before or while entering the lift before the incident of 8.11.2013 and also that the accused did not pull her back into the lift when she and the accused exited the lift on the second floor during the incident of 8.11.2013. PW1 states that the CCTV footage shows that she is holding her dress with her right hand while exiting the lift on the second floor during the incident of 8.11.2013. PW1 also admits that in the email attachment titled 'Testimony' dated 18.11.2013 it is recorded that the door opened on the second floor and he said 'again the universe is telling SC (Ors) 10/2014



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us something' to which she said that 'she is taking the stairs' and started to walk out, he pulled her back in the lift sensing that she was on the verge of hysteria by this point he was totally comfortable physically manhandling me but sensing her sheer panic he did not touch her until the lift reached the ground floor. And it is not specifically recorded that when the lift stopped on the second floor she was extremely nervous and rushed out of the lift in blind panic and was looking around for where to run and she heard him saying something behind her. As she turned around she saw he had come out and pressed the button of the lift again and walked in. Seeing the doors of the elevator open in confusion and panic she ran back inside the lift because she was not thinking clearly. It is also not recorded in her statement before the Magistrate and statement before the police. PW1 also admits that in the email dated 16.11.2013 it is not recorded that she was pushed up against the wall of the lift and also that the accused put his tongue in her mouth and that the accused pulled her under wear down to her ankles. PW1 also admits that in the email dated 16.11.2013 it is not



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recorded that she reached Grand Hyatt on 8.11.2013 in a state of extreme stress and anxiety. PW1 states that in the email attachment titled 'Testimony' dated 18.11.2013 it is stated that when the doors closed the accused started to try and kiss her again which clearly shows that the complaint does not mention about the acts which is admitted by PW1 which have been deposed before the Court, which shows that there is an improvement made by PW1 in her version.

293. The prosecutrix has stated that she as well as the three witnesses had also considered telling the Managing Editor Shoma Chaudhary what had transpired but they agreed that this would not be possible because Ms. Chaudhary was extremely busy as she was moderating almost every panel from 9.00 am in the morning to 7.00 pm in the evening and it was almost impossible to meet privately with her at that time. The prosecutrix has also claimed that they were also concerned about the closeness between the accused and Ms Chaudhary. However, no other prosecution witnesses,

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including PW11, PW12 and PW56 has made any allusion or statement about any closeness between Shoma and the accused, and the version of the prosecutrix stands absolutely uncorroborated and unsubstantiated.

294. DW2 Vijay Pandey, who was a photographer of Tehelka at THINK 2013, also produced 7 printouts of photographs taken by him on 8/11/2013 between 9 to 9.30 pm at the VIP lounge, in which Shoma Chaudhury and the prosecutrix are seen in conversation and he himself is seen reflected in a mirror with the camera with the flash light on. On being shown the CCTV footage contained in MO No.19, the prosecutrix admitted that it is seen that the accused and she had exited the lift on the ground floor at 20:11:12 hrs after the alleged incident of 8/11/2013. With the 50 minutes time lag on the CCTV camera as certified by the Grand Hyatt via affidavit afterwards, the actual time would be 9.01.12 pm. It is the case of the prosecutrix that after exiting the lifts, she went to VIP lounge of Block 7, where she first met PW11 Ishan and informed him about the second



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assault. On being shown the CCTV footage contained in MO No.19, the prosecutrix admitted that it is seen that she is accompanying Robert de Niro and Drena to the lift on the ground floor from the VVIP lounge on 8/11/2013 at 20:24:03 hrs (as per date and time stamp in the CCTV footage). The above evidence therefore clearly indicates that the prosecutrix was in the VIP lounge between about 9.01.12 pm to 9.14.03 pm, which means that the prosecutrix was in the VIP lounge for at least 13 minutes. However, on being shown the CCTV footage contained in MO No.19, the prosecutrix admitted that it is seen that she and the butler Sandeep Rawat after dropping Robert de Niro to his room, exited the lift on the ground floor at 20:27:20hrs and that she is proceeding towards the Grand Club (the VIP lounge) which is the location where the VIP party was going on. The above footage clearly shows that the prosecutrix once again visited the VIP lounge for the second time at 9.17.20 pm. On being shown the CCTV footage contained in MO No.19, the prosecutrix admitted that it is seen that she and the butler Sandeep Rawat are exiting the lift on the second



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floor on 8/11/2013 at 20:44:54hrs. in order to go to the suite of Robert de Niro to take him for dinner. Therefore, there is overwhelming evidence on record about the prosecutrix going twice to the VIP party held in the VIP lounge, once in the presence of Robert de Niro and once in the absence of Robert de Niro, and meeting PW45, Shoma. Therefore, the question is, if the sexual assault actually took place, why the prosecutrix not disclosed the same to Shoma, especially when she was alone in a conversation with Shoma and had all the privacy to tell her which is evident from the photograph produced on record. PW45 has stated that at the time she met the prosecutrix in the VIP lounge on the night of 8/11/2013, the prosecutrix was normal and in a good mood and did not look distressed or terrified in any way. PW1 admits that the accused did not tell her that she would lose her job for having told Tiya on 8.11.2013.



294. PW12 Shougat Dasupta, on being shown printout No. 7 which is marked Exh.X colly in the deposition of PW11, also admitted that the prosecutrix in the said photograph looks to be happy and smiling. The
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above evidence of PW45 and PW12 and the printouts of photographs clearly proves that the prosecutrix was absolutely in a good mood, happy, normal and smiling at the time she met PW45 Shoma on the night of 8/11/2013 and did not look distressed or traumatised in any manner whatsoever, though this was immediately a few minutes after she claims to have been sexually assaulted again by the accused, putting her in a state of panic and trauma.

295. PW36 Neena has also stated that she had seen the prosecutrix meeting Shoma many times on all the days of Think 2013. This unnatural conduct of the prosecutrix is again relevant under Section 8 of the Evidence Act. The Prosecutrix has admitted that there are two SMSs sent from her phone to the Accused on 8/11/2013 at 10.54.14 pm and 10.54.15 pm, both of which say "at Capiz with Bob" and that these messages were not sent by her in response to any messages.

The following WhatsApp message was sent by the prosecutrix to the accused:-

96425 Outgoing 11/8/2013 11:00:36 PM At capiz with Bob

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296. The voluntary statement made by PW1 that they were sent by her because Drena and she had to physically pull Mr de Niro out of a throng of fans who were swamping him, physically pushing him and taking photographs of him at the table where he was meant to be eating dinner with Mr Bachchan, Mr. Farhan Akhtar and other Bollywood celebrities and that the accused had asked her to bring Mr de Niro to this table so that all the celebrities could be photographed eating together as publicity material for Think, and that however, due to the uncouth behaviour of people around Mr de Niro, they had to take Mr de Niro away and as their chaperone she had to explain to the accused why the chief guest was not present at this important dinner, cannot be believed at all, as there is absolutely no proof that the accused told the prosecutrix to bring Robert de Niro to any table, and if the prosecutrix had recently again been sexually assaulted by the accused and was terrified of him and not in a proper state of mind, why would she report to the accused and disclose to him her location, when she could have reported to Neena, Shoma and Payal Puri, all of



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whom she was reporting to and updating on a regular basis. The prosecutrix has claimed that she had a good working relationship with Shoma Chaudhury and Neena Tejpal who is the sister of the accused throughout her time at Tehelka and she was in touch with Shoma and Neena through email and SMS and phone calls during THINK 2013. The prosecutrix evasively stated that she does not recall whether she was reporting to Payal Puri about Robert de Niro's movements during Think 2013 and whether she was WhatsApping Payal Puri during Think 2013. The below mentioned WhatsApp messages exchanged between Payal and the prosecutrix on 7/11/2013 at 6:49:05pm to 6:49:29 pm clearly and categorically show that she was reporting to Payal about Robert de Niro's movements and whereabouts at THINK 2013.

"96182 Haha

96181 I just feel the need to give you updates

96180 He's taken a round of the hotel and is now going for a bath."



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Further, to her claim that she was required to explain why Robert De Niro was not at the dinner, it makes absolutely not necessary to send the accused a message saying "At Capiz with Bob", because that in no way informs him of why they are not at the dinner, and what happened to prevent them being at the dinner, despite there being absolutely no enquiry from him about the same. The prosecutrix's sending the above messages to the accused proactively, without any attempt by him to ask her where she was, and her sending the same message thrice in the span of a very few minutes, clearly establishes that the prosecutrix was not traumatised nor terrified of being located or found by the accused, and completely belies the prosecution case that immediately before the said messages, the accused had sexually assaulted the prosecutrix again. This conduct of the prosecutrix is again relevant under Section 8 of the Evidence Act.



297. The prosecutrix has stated that Robert de Niro and Drena asked her to convey to the accused that

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they were very upset at the way Mr de Niro had been pushed around by the crowd and that she left Block 7 around 11.30 pm and looked for the accused to convey this message and found him in the main garden area at a long dining table full of guests and that she called him away from the table but still within the view of the guests so that he would not be able to touch her again and at this time she told him that "Bob is really upset. He got mobbed really badly today" and that the accused replied "I do not give a fuck about Bob. I cannot believe you went and told Tiya" and that she said "what happened was not right. There is no way I could have kept it from her" and that the accused said "She is my daughter. Do you even understand what that word means. Get away from me. I am so fucking pissed with you right now," and that she left crying from the spot. However in her statement to the police the prosecutrix had admitted that she stated that Tiya left the Capiz bar at around 11.20 pm and in half an hour, Mr De Niro and Drena asked to be dropped back to their room, and that after Tiya left Capiz Bar, Mr de Niro and Drena were finishing their



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dinner and drinks. Therefore, if Tiya left at 11.20 pm and in half an hour the prosecutrix left Capiz Bar with Robert de Niro, how would she meet the accused at 11.30 pm and it had to be at least past midnight. PW11 Ishan Tankha has also stated that when they parted company on 8/11/2013 in Guest House No 7, the prosecutrix had promised him that she would try her best to stay away from the accused and if she had recently been sexually assaulted again by the accused and was in a state of trauma, is it even remotely plausible that the prosecutrix would seek out and meet the accused. This clearly shows that there was no anxiety, fear, hesitation or trauma at meeting the accused, including when she was alone and it was a late hour, and clearly indicates that she was not sexually assaulted by the accused and was not afraid of the accused and therefore freely communicating with the accused at THINK 2013, including seeking him out and volunteering to him via messages her own location.

298. The prosecutrix has further stated that when she was crying after the accused had fashed out at

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her on the night of 8/11/2013, she met Tiya. Apart from Tiya, she did not meet anyone else. Further, the prosecutrix has stated that many people known to her were present at a distance at the time on 8/11/2013 when the accused lashed out at her, but she does not remember their individual names but that they were all guests at Think. This clearly shows that guests known to the prosecutrix were present at the time the accused allegedly lashed out at the prosecutrix. However, neither Tiya nor any other witness has been examined by the prosecution to substantiate this version of the prosecutrix that the accused shouted at the prosecutrix for disclosing anything to Tiya and that she left the accused crying.

Further, the prosecutrix has herself stated that the accused was at a long table with celebrity guests when she sought him out to speak to him. It is extremely revealing that the prosecutrix's account neither demonstrates any kind of normative behaviour on her own part - that an prosecutrix of sexual assault on consecutive two nights might plausibly show, nor does it



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demonstrate any such behaviour on the part of the accused.

299. First of all the statement of PW1 that "Tiya did not want the guests to see me crying either so she took me to her room via the verandah and left me there" is marked as an omission in the email to PW11 Ishaan dt. 16/11/2013 and in the email attachment titled testimony dt. 18/11/2013. Secondly neither Tiya nor any other witnesses have been examined by the prosecution to establish the fact that Tiya met the prosecutrix after the accused had lashed out at her, and that at that time Tiya told the prosecutrix that she had told the Accused 'to keep it in his pants'. It is submitted by the accused that it is probably after meeting the accused on the night of 8/11/2013 and after the accused castigated the prosecutrix for her dereliction in her duty, the prosecutrix, in paranoia, falsely and maliciously made a disclosure to the accused's daughter about an alleged sexual assault on her by the accused. The above submission has force and cannot be ruled out. The



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prosecutrix has stated that Tiya had stated to her that she told the accused to keep it in his pants and that she did not ask Tiya what she had meant by telling the accused to "keep it in his pants". Though the above statement is hearsay evidence as Tiya has not been examined, it is relevant to question this reference as to why Tiya would tell the accused to keep it in his pants, when it is not the case of the prosecution that he removed anything out of his pants. There is no explanation by the prosecution of this aspect.

300. The prosecutrix has stated that she does not recollect whether she informed the late Suzette Jordan about her well-being at THINK 2013. PW22 Harish Iyer has stated that he knew the prosecutrix one year approximately prior to THINK -2013 and that he was in touch with her over the phone by calling and e-mails and that before coming to THINK-2013, he had developed friendship with the prosecutrix and that the relationship he had with the prosecutrix was more confiding from his side than the prosecutrix side and that even before coming to THINK-2013 he shared personal matters with

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the prosecutrix. PW22 Harish Iyer has admitted that he is a champion of Rape Survivors and that whenever any rape survivor contacts him; he offers support without verifying the falsity or truthfulness of the allegations. PW22 has also stated that as a rape survivor he has inherent bias towards any alleged rape victim and that he always believes the survivor. PW22 has further stated that prior to THINK 2013, the prosecutrix knew that he was a vociferous fighter for the rights of rape victim and victims of sexual assault and that prior to THINK 2013 the prosecutrix knew that he was also informally counselling rape victims. PW22 further stated that on 8.11.2013, he saw the prosecutrix many times at Grand Hyatt and that he met the prosecutrix in the green room on 8.11.2013, and that she was alongwith him and Suzette for about 10 minutes. He has also admitted that on 9.11.2013, the prosecutrix had sent him a SMS in the evening, that she would see him at the evening performance. PW22 has stated that the prosecutrix was not responding to Suzette and that Suzette had told him that she had gone to meet the prosecutrix in his absence and that the prosecutrix



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was not responding to her and was always busy with Robert De Niro. PW22 has stated that the prosecutrix did not express to him on 8th, 9th and 10th that she was afraid of the accused. PW22 has stated that throughout THINK-2013, the prosecutrix had neither told Suzette nor him that she was sexually assaulted by the accused. PW22 has stated that Suzette and he, as rape survivors, did not intuitively feel on the 10.11.2013 that the prosecutrix was sexually assaulted, and similarly on the 8.11.2013 he and Suzette did not feel the prosecutrix was sexually assaulted. Though, PW22 Harish Iyer has said that he could tell that the prosecutrix was not herself and that he discussed the same with Suzette, and that they clearly attributed it to work pressure. Therefore it is Innocuous. PW22 has stated that he got an impression that the prosecutrix was distant and lost in her own world on 8.11.2013, but in cross-examination claimed that it was his own subjective perception, and when he discussed the same with Suzette, they attributed it to work pressure. PW22 has further stated that on the 8.11.2013, he did not inquire with the prosecutrix why she appeared distant

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and lost in her own world, and that he did not specifically reach out to the prosecutrix on 8.11.2013 and 9.11.2013 to find out from her the reason for looking distant and lost in her own world. He has further stated that before leaving Goa he did not contact the prosecutrix to ask her the reason why she looked distant and lost in her own world.

301. To the question whether it would be natural for a sexual assault victim to reach out to another sexual assault victim who is present with them and known to them to confide in them about their own sexual assault, PW22 said - Yes it is natural but every case is different. The above conduct of PW22 completely belies the fact that PW22 found the prosecutrix distant and lost in her own world. PW22 has stated that he does not remember when it first occurred to him that he should send the email dated 30.11.2013 to the media. PW22 could also not explain why he did not send the email dated 30.11.2013 between the 20.11.2013 to 30.11.2013. PW22 has stated that he came to know about the incident of sexual assault on the prosecutrix for SC (Ors) 10/2014

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the first time when he read it in the news. However, it is in evidence that at the incident of sexual assault was first reported by the media on 20.11.2013. PW22 has stated that prior to reading about the sexual assault in the news, he was not told about the sexual assault on the prosecutrix by any person. PW22 has also admitted that he may have phoned the prosecutrix or whatsapped her on 21.11.2013 asking her whether she needs any help. Therefore, when PW22 was in contact with the prosecutrix since the 17/11/2013 and was aware by then about the alleged sexual assaults on the prosecutrix, apparently on having come to know of the same through the prosecutrix, which is clear from the whatsapp chats dated 17.11.2013, 19.11.2013 and 21.11.2013. It clearly shows that PW22 had sent this email with fabricated contents at the instance of the prosecutrix, being her friend.



302. PW1, the prosecutrix has stated that when she called Raghu on the night of 8/11/2013, he was on his way to Panjim but when he heard her crying he knew something terrible had happened and that she asked him to turn back and come to the Grand Hyatt and that Raghu

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met her outside Tiya's room in the main garden area and at this time she told him that the accused had sexually assaulted her on two occasions and that he, the accused, was very angry because he knew she was not keeping quiet. According to PW1, Raghu attempted to calm her down and he also talked to her about her options to either leave THINK or wait till it was over to tell Ms. Chaudhury what had happened but he also felt that this was a bad idea given the closeness between Ms. Chaudhury and the accused. PW1 states that Raghu agreed that the only way this would probably end was with her losing her job. Raghu (PW13) has stated that he met the prosecutrix there and she told her that she had been molested by the accused in the evening in the lift and that she was also molested by the accused on the previous day and that she did not give him any precise details about the incident but that she seemed to be upset and angry and he tried to comfort her. First of all, it is pertinent to note that in the email to Ishan dt. 16/11/2013 and email attachment titled Testimony dt. 18/11/2013, the prosecutrix had not stated that "I had to remain at the Grand Hyatt to plan



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the itinerary for Mr de Niro and Drena for the following day but the Tehelka staff had retired to the International Centre, Goa by then. I was afraid of waiting alone or that the accused might summon me again so I called my friend Raghu Karnad who was also a guest at THiNK and an ex-employee of Tehelka. When I called Raghu he was on his way to Panjim but when he heard me crying he knew something terrible had happened. I asked him to turn back and come to the Grand Hyatt. Raghu met me outside Tiya's room in the main garden area. At this time I told him that the accused had sexually assaulted me on two occasions and that he was very angry because he knew I was not keeping quiet. Raghu attempted to calm me down. He also talked to me about my options to either leave THiNK Fest or wait till it was over to tell Ms. Chaudhury what had happened but he also felt that this was a bad idea given the closeness between Ms Chaudhury and Mr. Tejpal. Raghu agreed that the only way this would probably end was with me losing my job. I waited with Raghu in the main garden area and then outside the THiNK Bazaar waiting for de Niro to summon



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me to plan for next day. When I received the call from Mr De Niro's private number, I went to Block 7." The SMS record of the prosecutrix, produced by PW14 clearly shows that PW13 Raghu Karnad had sent the following SMS to the prosecutrix on 08/11/2013 at 2.42 pm, "How is think going" and in reply to the message the prosecutrix had messaged PW13 back saying that she is chaperoning Robert de Niro and so "am basically attached at the hip". The above exchange of SMSs clearly shows that though PW13 had asked the prosecutrix about how THINK was going at 2.42 pm of the afternoon of 8/11/13, the prosecutrix did not disclose anything to him about the alleged sexual assault. Therefore, why would she suddenly call PW13, especially at 11.30 pm, to disclose the same to PW13. The prosecutrix has also stated that when she met Ishaan on the night of 08.11.2013, after the incident, she did not ask him to wait for her to accompany her back to the Goa International Centre and that she did not tell Vishnu or Shougat on the night of 08.11.2013 to wait for her or accompany her back to the Goa International Centre. It is also important to note that



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having already allegedly told PW11, PW12 and PW56 about the incident the previous night and having allegedly told PW11 about the second incident a few hours prior, the most natural and obvious act would have been for the prosecutrix to simply ask one of them to stay with her at the hotel till she was free to leave. Further, it is not the prosecutrix's case that she encountered PW13 at Grand Hyatt and therefore asked him to wait for her but the fact that she called him and then asked him to return to the Grand Hyatt despite his already being on his way to Panjim. Further, the testimony of Raghu Karnad (PW13) must be scrutinised with utmost skepticism and rigor, due to his incipient friendship with the prosecutrix and his apparent interest in the matter, which can be seen from the following messages:-

"SMS dated 21/11/2013 at 3.12pm sent by PW13 to the prosecutrix: "think a group of young journos should co-author a letter asking Tehelka to step up" and the message of the prosecutrix to PW13 in reply dated 21/11/2013 at 03.25 pm "yes".



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Further, it is PW13's stated testimony that on 11/11/2013 or 12/11/2013, he cannot be certain which day, he met PW15 Biki and the prosecutrix for drinks and dinner in Goa and then stayed the night with them. Further, the prosecutrix the next day invited him to join her for drinks and live music at Baga beach.

303. The prosecutrix has stated that she could not afford to lose her job but she was also extremely scared because she felt that the accused could use his position as her boss to summon her anywhere he wanted, whenever he wanted, and that he felt entitled to her body. The prosecutrix has further stated that she was trying to avoid the accused as much as she could after the incident of 7/11/2013. The prosecutrix has also stated that from 9/11/13 she made sure to stay as far away from the accused as possible except when they had to talk about work and at this time too, she made sure that they only talked in extremely public situations like the Green Room, the lobby or on the phone. Further, when asked whether she was afraid when she was alone at the Grand Hyatt on the night of 8/11/2013 that the accused

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could use his position as Editor-in-Chief to summon her at any moment he desired, she said yes that she was afraid of this, which is why she tried to ensure she would not be alone, particularly after Tiya confronted him and he lashed out at her. It is pertinent to note that PW11 Ishan Tankha has admitted that it could be that he was present on Grand Hyatt on 9/11/2013 at 11.00 to 11.30 pm. The CCTV clearly shows the prosecutrix visiting the suite of Robert de Niro alone on the night of 8/11/13 between 1.05 am till 2.30 am and on the night of 9/11/13 between 11.30 pm to 12.05 am. It is pertinent to note that neither the draft complaint of 15/11/2013, nor the Testimony dated 18/11/2013 made any mention of the prosecutrix's late night visits to Robert De Niro's room on two nights, the intervening night of 8/9 November 2013 and again the next night, the night of 9/11/2013. The prosecutrix states that she does not remember the time but it was late, however the next day Mr. De Niro and Drena wanted to go out for sight seeing, shopping, to the beach, to meet friends etc. She further states that she had to plan their entire day's schedule as well as all the things they



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would require such as Indian currency, food, chargers, security, multiple cars, alcohol, sunscreen, bodyguards etc. She further states that when she finished making this list and the planning was done, she left the Grand Hyatt and went back to the International Centre, Goa. At the outset, this entire narrative on the part of the prosecutrix is a fabrication designed to cover up her real reason for visiting Robert De Niro's room at an unnaturally late hour, which is ratified by a detailed set of WhatsApp messages exchanged between the prosecutrix, Tiya and a very close friend of theirs, Malika Singh.

304. PW45, Shoma Chaudhary has stated that it is true that it wouldn't be within the scope of work of a shadow to spend time in private in the room of a speaker after working hours. The role of a shadow is basically that of a liaisoning officer to handle the logistics and to make the stay comfortable for the speaker. PW36 Neena Sharma has stated that the entire itinerary and schedule of Mr. De Niro was discussed with him on day one itself when he arrived at THINK, and that the itinerary and



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schedule of Mr. De Niro was never changed at the last moment. Further, with regard the intervening night of 8/11/2013 and 9/11/2013, PW16 Priyan Krishnan Shivpalan was shown the below CCTV footage clips from EX.P2, and his answers were as follows : -

"Video file no. 192.168.10.22_08_20131109001417_20131109001439.tve shows that the prosecutrix is seen entering the ground floor lift lobby of Block 7 on 9.11.2013 at 00:14 hrs as per date and time stamped as reflected in the footage. The recorded CCTV footage viewing has a time lag of 50 minutes from real time live viewing and the time 00:14hrs. seen in the footage would be actually 01:04 hrs. Video file no. 192.168.10.22_02_20131109001449_20131109001506.tve shows that the prosecutrix is exiting the lift of second floor of Block 7 on 9.11.2013 at 00:14:50hrs, which date and time stamped is reflected in the footage. The time 00:14:50 hrs should be read as 01:04:50 hrs.



Video file no. 192.168.10.22_02_20131109013307_20131109013344.tve shows that the prosecutrix is seen

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on the second floor of Block 7 going to the lift, pressing the lift button from outside and thereafter walking towards the staircase whilst talking on a mobile phone at 01:33:14hrs on 9.11.2013 which date and time as stamped is reflected in the footage. The time 01:33:14 hrs should be read as 02:23:14 hrs. Video file no. 192.168.10.22_08_20131109013359_131109013417.tve shows that the prosecutrix is exiting the ground floor of Block 7 by using the stairs on 9.11.2013 at 01:33 hrs which date and time stamped is reflected in the footage. In this particular footage the time 01:33 hrs should be actually read as 02:23hrs. on 9.11.2013. Both the above recordings were recorded during the intervening night of 8th - 9th November 2013."

PW16 has admitted that the prosecutrix is seen in the footage in the intervening night of 8th/9th November 2013.



305. In this context the WhatsApp chat of the prosecutrix on the WhatsApp group "woof, wag & wiggle" is especially relevant. The prosecutrix evasively stated

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that she does not recall if she was the creator and Group Admin of a WhatsApp group named "woof, wag & wiggle" and that she does not recollect any WhatsApp group by that name. However, the WhatsApp chat content retrieved by the Lab Systems India Ltd. from the phone of the prosecutrix clearly show some traces of messages exchanged on the WhatsApp group "woof, wag & wiggle" but having no content, which clearly shows that the same were deleted by the prosecutrix. When the prosecutrix was shown Exhibit 681(1) subject to proof and asked whether the said exhibit shows the chat she had on the WhatsApp group "woof, wag & wiggle", the prosecutrix claimed that it appears to be so, but that she does not recollect. However, DW1 Malika Singh has stated that she knows the prosecutrix since the year 2012 and that she is a friend of the prosecutrix and they had a common group of friends. She has further stated that she is aware of the WhatsApp chat group "woof wag and wiggle" and that the prosecutrix had created this group around July - August 2013 and the prosecutrix was the admin. DW1 has stated that there were only 3 members



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including the admin and the other member of this group was Tiya Tejpal. DW3 Rohit Chawla also stated that all three of them were actively chatting on the group. She has further stated that she was removed from the group on 17th November 2013, but though she was removed she had access to the earlier chats up till 17th November 2013. DW1 Malika Singh also identified Exh.681(2) being the 65B certificate dated 3/3/2018, as well as Exh.681(1) and the witness after going through the printouts of the chats stated that these were the printouts of the chats which were shown to her by Tiya Tejpal and which she had with the prosecutrix on the WhatsApp group 'woof, wag and wiggle'. DW1 also produced the printout chats of the WhatsApp group woof wag and wiggle which were printed on 16/2/2021 along with the 65B certificate dt. 16.2.2021, which were marked as Exh.790 (1) and (2). As made clear by the chat, this is a conversation that took place between the prosecutrix, DW1 Malika Singh and Tiya Tejpal on the morning of 9/11/2013, in which the prosecutrix recounts what happened when she visited Robert De Niro's room late the previous night. It is to be

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noted that this is the exact same night of the alleged second sexual assault on the prosecutrix by the accused. At the outset, DW1 in cross-examination has stated that there is nothing in the group chat regarding the sexual assault on the prosecutrix by the accused. DW1 in cross-examination also claimed that the chats are very intimate and personal and revealing.

306. To the question in cross-examination why in the WhatsApp message at Exh.681(1) she was found referring to Nishu i.e. the prosecutrix as "you lucky cunt", DW1 stated that when somebody you know closely is engaging intimately with a celebrity you will call them lucky.

307. DW1, Malika also admitted in cross-examination that she is asking the prosecutrix whether Bob has called the prosecutrix to his room in her message "to his room" and "how does he flirt"? To the question in cross-examination whether she was also found stating that "oh my god this story is the highlight of my week I

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can already feel it", and asked to explain what she meant by this, DW1 stated that sitting in Mumbai at her job she was excited to hear this news from the prosecutrix that she had gone to Robert de Niro's room late at night and that they were engaged in intimate acts like kissing and cuddling. To the question in cross-examination whether she stated in her message at (annexure 8) "he can grab any bum at any time. He's earned it" and what she meant by this, DW1 stated that she doesn't fully agree with the statement that she has made that Bob or anybody can grab any bum at anytime but she said it in the spirit of the conversation. To the question in cross-examination whether she has stated in her message at (annexure 9) "would that have been a first for you? Bedding a grandpa?" and what she meant by that, DW1 stated that bedding means having sex with Robert de Niro who the prosecutrix has referred to as a grandpa. To the question in cross-examination whether she can explain what she meant in her message she is found stating "I wonder if bob can even get it up", DW1 stated that she wanted to convey that she wondered if Robert de Niro can maintain



a penile erection owing to his age. DW1 was asked in cross-examination whether it is not common for girls to fantasise about male celebrities, to which DW1 answered in the affirmative and said that this is just as common as it is for men to fantasise about female celebrities. Further, DW1 stated that she is not familiar with the Youtube series named "Thirst tweets" and to the suggestion that this series is all about female fans making sexual comments about male celebrities; she claimed that she did not know. In re-examination, when DW1 was asked to explain why she asked the prosecutrix whether she is bedding a grandpa, DW1 stated that she had a recollection about the prosecutrix having a sexual encounter with Bob Geldof at THINK 2012.

308. The argument of the Spl. PP that DW1/Malika Singh was examined to indulge in victim blaming/ shaming is misplaced as Malika Singh appears to have been examined to prove the WhatsApp chat and Malika Singh absolutely made no comment on the general immoral character of the prosecutrix, except for hard



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facts spoken of by the prosecutrix in the chat. The call records of the prosecutrix at page No 1334 of Vol. 7 show that the prosecutrix received a phone call from Robert de Niro from number 0019172095847 at 00:11:46 of 9/11/2013. The prosecutrix to that suggestion stated that she does not recollect. The prosecutrix has claimed that the suite of Robert De Niro and the room of Drena were interconnected. The prosecutrix has admitted that in her email to Ishaan dt. 16.11.2013, email attachment titled testimony dt. 18.11.2013, her statement to the Police and the Magistrate, the scene of offence panchanama and the supplementary statements she has not stated that Robert De Niro and Drena shared the same suite, Therefore there is an omission.

309. PWS Ashok Naik, the pancha witness for the panchanama of the scene of offence has stated that the prosecutrix also told them that the same foreign actor was occupying the Room No.7207 and the adjoining room was occupied by the daughter of the said actor. However, PWS has not spoken anything about going in the suite of Robert De Niro and the Scene of Offence panchanama

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also does not say so. PW47, Walter Pereira, the Manager of Grand Hyatt has stated that the suite has one living room and one bedroom and that he is not aware if the suite room was allotted to one or two occupants. The Investigating Officer PW70, however, for the first time in examination in chief stated that there was interconnectivity between the suite of Robert De Niro and the room of his daughter Drena and that she and others entered the suite of Robert De Niro and that the prosecutrix pointed it out from inside the room of Drena. However, PW70 in cross-examination admitted that these are omission in the Scene of Offence Panchanama. Therefore, the intention of PW70 can be to fill in the lacuna in the prosecution case. PW16 Priyan Krishnan Shivpalan was shown the below CCTV footage clips from EX.P2, as regards the intervening night of 9/11/13 and 10/11/3, and his answers were as follows:-

"Video file no. 192.168.10.22_02_20131109224254_20131109224312.tve shows that the Prosecutrix is seen on the second floor of Block 7 exiting the lift along with the butler Sandeep Rawat and thereafter walking towards

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the suite at 22.42.53hrs. on 9.11.2013 which date and time is stamped is reflected in the footage. The time 22.42.53hrs. should be read as 23.32.53hrs.

Video file no. 192.168.10.22_02_20131109231400_20131109231436.tve shows that the Prosecutrix is seen on the second floor of Block 7 going to the lift at 23.14.01hrs. with the mobile phone on in her hand and thereafter seen entering the lift at 23.14.15hrs on 9.11.2013 which date and time is stamped is reflected in the footage. The time 23.14.15 hrs should be read as 00.04.15 hrs of 10.11.2013. This footage is of intervening night of 9th and 10th November 2013."

PW16 has admitted that the prosecutrix is seen in the footage in the intervening night of 9th/10th November 2013.

310. From the prosecutrix's composure visible in the CCTV footage before and after she goes to the second floor of Block 7 to Robert De Niro's suite past the midnight of 8/9th November 2013, in which she recounts these incidents to her friends in two separate WhatsApp groups, to the fact that Mr. De Niro is referred to by

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herself as a grandpa, owing to his age, to the fact that she also corroborates her previous year's sexual encounter with Bob Geldof, these sexual encounters on both nights are stunning and absolutely indisputable evidence that the prosecutrix's assertions about her sexual assault .

311. The prosecutrix was shown the image bearing no. IMG-20131109-WA0008.jpg contained in the Media sheet from the contents of CD-III of Lab Systems Pvt. Ltd. (which are contents extracted from the prosecutrix's phone) and asked when and where the said image was captured, to which the prosecutrix answered that the photograph was taken on 9/11/2013 at Park Hyatt on the day that she accompanied Mr De Niro and Drena to Arrosim beach. The said image was also sent by the prosecutrix to her friends on her WhatsApp group 'woof, wag and wiggle' and proved by DW1 Malika. The said photograph clearly shows the prosecutrix as cheerful and happy, and far from traumatised or upset in any manner, as she relaxes in the company of Robert de Niro and his daughter on the beach. It is also pertinent to note

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that the prosecutrix herself cheerfully shared the image with multiple friends, in real time. The prosecutrix has claimed that she does not remember at what time she went to sleep on the night of 9/11/2013, which member of the THiNK production gave her the keys of the room, what time was she was supposed to meet Mr de Niro and his daughter on the morning of 10/11/2013, at what time she got up on 10/11/2013, at what time she met Robert De Niro on the morning of 10/11/2013, whether she went back to Goa International Centre on the morning of 10/11/2013 before she met Robert De Niro, and the time of Robert De Niro's session on 10/11/2013. Further, to the direct suggestion that she was seen dancing at Capiz Bar during the intervening night of 9/11/2013 and 10/11/2013 up to 3 am in the morning, she again claimed that she does not remember and did not deny the fact.

312. Further, PW13 M. S. Raghu Karnad has stated that on 10/11/2013 at about 00.10 hrs the prosecutrix met him at Grand Hyatt when she was in the company of Biki, Aastha and others who he does not recollect, and the place where they met was behind

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"Chivas", a stall erected during the Think festival 2013 and from the name it appears that it is a bar. He has further stated that on 09/11/2013 he left the Grand Hyatt at around midnight and that he was last with the prosecutrix in the bar where the party was going on at Grand Hyatt before he left. He has claimed that he does not recollect the name of the bar. PW13 however could not say who was present with the prosecutrix when he parted company with her in the bar on 09/11/2013 as the bar was crowded. Therefore the evidence of PW13 also proves the fact that the prosecutrix was partying in a bar at the Grand Hyatt till he parted company with her at midnight of 9/11/13. Further, DW2 Vijay Pandey, the Photo Journalist of Tehelka has produced printouts of two photographs taken by him on the night of 9/11/2013 at around midnight on the lawns of Grand Hyatt, which were marked as Exh.794 (1) and (2), and in Exh.794 (1) he identified Avalok Langer who was a correspondent for Tehelka and the prosecutrix and in the other photograph Exh.794(2) he identified only the prosecutrix. The above photos show the prosecutrix to be absolutely cheerful and



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with a smile on her face and not disturbed, reserved, terrified, or traumatised in any manner. When the said photos earlier marked as Exh. 680 (1 to 3) subject to proof (in cross) were earlier shown to PW12 Shougat Dasgupta, PW12 identified in Annexure 1 the prosecutrix and Avalok Langer and in Annexure 2, PW12 identified only the prosecutrix. PW12 admitted that in Exh.680 (1 and 2) the prosecutrix is sitting on the lawns of Grand Hyatt during THINK 2013 and that the prosecutrix is seen smiling in the printout at Exh.680 (2). When the prosecutrix was shown the above said photos, she identified PW13 Raghu Karnad in the said photographs, which confirm the fact that they were taken on the night of 9/11/13 on the Grand Hyatt lawns. PW36 has also stated that the prosecutrix had attended the late night parties in the nightclub in the hotel, the night club being Capiz Bar. PW43 Prawal Srivastava has stated that when he met the prosecutrix on 7th, 8th, 9th and 10th November 2013 the prosecutrix was normal in her behaviour and was also attending night parties on all these dates. DW3 Rohit Chawla has stated that on most of the evenings he



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had seen the prosecutrix at the Capiz Bar drinking alcohol and she appeared very relaxed. DW4 Nikhil Agarwal has also stated that on the night of 8/11/2013 he saw the prosecutrix partying at Capiz bar and she was dancing with a drink in her hand and on 9/11/2013 he did not see the prosecutrix during the day, however on the night of 9/11/2013 i.e. about 4 am of 10/11/2013 he saw the prosecutrix partying at Capiz Bar, and the prosecutrix was dancing and drinking alcohol and that he saw her leaving the Capiz bar with Kartikay, and that Kartikay was staying in one of the rooms at the Grand Hyatt. It is pertinent to note that in the statement to the police with which PW65 Aman Sethi was confronted, he had stated that the prosecutrix had sent a message to PW65 Aman, on the night of 9/11/13 at 01:58 am IST, that she was dropping Robert de Niro to his room, (though she had already been to his room and had left at 12:04 am), which clearly shows that whilst she was partying at the Capiz Bar during that time, she lied to PW65 and made him believe that she was still working at that time. PW36 Neena Sharma has also stated that on 10th morning she was



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informed by the production team that the prosecutrix had stayed the night at the Grand Hyatt in the Production room allotted to Mr Kartikeya Gehlot.

313. It also exposes the fact that the prosecutrix had no problem freely moving about the hotel where the accused, her alleged attacker, was also staying, well into the night and early hours of the morning. It is crucial here to note that the said Kartikeya had also written a letter to the Investigating Officer, PW70, which is marked as Exhibit 780. PW70, the IO, has stated that on 27/2/2014, she received a letter from one Kartikeya Singh native of Mumbai, addressed to Mr O.P. Mishra, DIG Goa, with the subject: 'Information related to the Tejpal case' and that the said letter was received by the office of the DIGP through courier which was sent to her and that in the said letter it was written that Kartikeya Singh was an integral part of the Think production crew for the year 2013; that he resides in Mumbai and has known the alleged prosecutrix for some time; that he has some information regarding the details and mental state of the alleged prosecutrix during the SC (Ors) 10/2014



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festival, particularly on the night of 9/11/2013, and that it was further stated in the said letter that the alleged prosecutrix spent most of the evening in his (Kartikeya Singh) presence and spent the night with him at the hotel; that he lent her the keys for one of the green rooms. PW70 has stated that it is further written in the letter that he has remained silent all this while as he did not want to be involved in this mess but that he feels his story will be beneficial to the investigation and that it was further requested in the letter to guide him so that he is able to do the right thing and bring everything to light. PW70, the Investigating Officer despite receiving the said letter did not record the statement of Kartikey Singh.

314. The submission of Spf. P.P. that the accused ought to have examined Kartikeya Singh is not acceptable as the facts were brought to the notice of the IO who had to investigate. The IO has dealt with the material that in an casual manner, and has failed to even record the statement, let alone probe, verify and investigate all the material potentially available in order to arrive at the truth. Further, the IO and the prosecution

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are both aware that the word of the prosecutrix is not meant to be taken as gospel but the circumstances, plausibility and above all, the requirement of the prosecutrix to prove herself a sterling witness are essential in law before lending absolute credence to her word. Yet, at every stage, anomalies, discrepancies, wild inaccuracies, improvements, omissions, contradictions and sheer impossibilities mark the narrative of the prosecutrix, yet the IO and the prosecution have turned a blind eye to them at every stage.

315. Ishaan Tankha (PW11) has produced a photograph at photograph no. 26 Exh.389 (1 to 28) wherein it is seen that the accused, the prosecutrix and Robert De Niro are standing close to each other in the photograph. PW11 has stated that the said photograph was clicked by him in the Green Room of Grand Hyatt on 10/11/2013 in the morning. PW11 has also stated that he met the prosecutrix in the Green room at Grand Hyatt on 10/11/2013 for the last time, where Robert De Niro and the accused were present. PW12 also admitted, on being shown photograph no.26 Exh.389 (1 to 28), that the



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prosecutrix is seen smiling in the photograph. PW22 Harish Iyer has stated that it is true that in the said photograph no.26 at exhibit 389(1 to 28) the accused, the prosecutrix and Robert De Niro are seen smiling and the prosecutrix is seen smiling more than the accused and Robert De Niro. PW43 Prawal Srivastava has stated that he was present in the Green room on 10th November 2013 and the prosecutrix was also present and in the Green Room when the prosecutrix was posing for photographs with the actor Mr Robert De Niro, and that the prosecutrix called out loudly to the accused saying "TT come and stand with me to take a photograph with Mr De Niro." PW45 Suparna Chaudhury has also admitted that on 10/11/2013 in the Green Room when the prosecutrix was in the process of taking photographs with Mr de Niro, the prosecutrix called out to the accused and requested him to stand along with her for the photograph. PW36 Neena Sharma has also stated that at about noon the prosecutrix brought Mr. De Niro for his session to the Green Room, where the speakers waited till it was their turn to go on stage, and there was a large



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crowd around Mr. De Niro and several photographers clicking photographs. She has further stated that a number of the Tehelka staffers requested her to click their photographs with Mr. De Niro on her mobile phone. She has stated that she clicked photographs for many of the staffers, and that the prosecutrix also wanted a photograph with Mr. De Niro but at that point she called out to the accused saying "TT please come - i want you in the photograph too". PW36 has further stated that she came across the prosecutrix multiple times from 7th to the 10th November 2013 at Grand Hyatt and that on 10/11/2013 she had a brief conversation with the prosecutrix in the Green Room of the Grand Hyatt and that she found the prosecutrix's composure normal whenever she came across her and met her. When the prosecutrix was asked whether a room was booked at the Goa International Centre for her stay from 6th to the 11th November 2013, she claimed that she does not know. The records reveal that PW1 has in fact communicated the same via WhatsApp messages to Biki, among others. The below evidence shows that the prosecutrix did not stay

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back in Goa because she was sexually assaulted and to deal with the same, or because her mother's friends were coming to her flat at Mumbai which would not give her privacy, but because she had a Russian boyfriend by the name of Danny and she had planned much in advance to stay with him in Goa both pre and post the event.

316. Initially, when questioned during cross-examination, the prosecutrix claimed that she did not recollect any acquaintance by the name Danny; then agreed he was a film professional; and that she stated that she does not know his nationality; but he was a foreigner and of Caucasian race. On being shown the image bearing no. IMG-20131030-WA0004.jpg contained in the Media sheet from the contents of CD-III of Lab Systems Pvt. Ltd. (contents of phone of the prosecutrix), the prosecutrix answered implausibly that she does not know when and where the photograph was taken but that the man seen in the photograph is Danny. How is it that if the prosecutrix did not know Danny that well, how the photograph is available on her phone dated 30/10/2013.

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317. (i).--The WhatsApp messages bearing nos. 86997, 87025, 87028 and 87031 exchanged between PW15 and the prosecutrix on 23/10/2013 clearly demonstrate that she knew Danny, well, and in fact discussed him with her close friends.

(ii).--The WhatsApp messages bearing Nos.88025, 88030 to 88039, 88050, 88062 to 88071, 88077 to 88099, 88115 to 88119, 88125 to 88133 exchanged between PW15 and the prosecutrix on 25/10/13 also clearly shows that she knew and was regularly meeting Danny.

(iii).--The WhatsApp messages bearing Nos.90625, 90627 to 90635, 90641 to 90643, 90655, 90685 to 90666, 90673 and 90674 exchanged between PW15 and the prosecutrix on 30/10/13 also clearly show that she knew Danny.

(iv).--The WhatsApp messages bearing Nos. 93291 to 93343 exchanged between PW15 and the prosecutrix on 3/11/13 also clearly shows that she knew Danny.

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(v).--The Whatsapp group messages bearing Nos.94733 to 94769 relating to the group "thinkwinkers" exchanged on 4/11/13 between PW15, Aastha and the Prosecutrix also confirm that the Prosecutrix knew Danny and discussed him with her close friends.

(vi).--Further, the prosecutrix clearly told an outright lie that she does not know whether Danny was in Goa from 6/11/2013 to 11/11/2013, which is clear from the Whatsapp messages exchanged on 30.10.2013 in Whatsapp group "Elle Help Group" whose members are Divyak, Anchal and the Prosecutrix, clearly shows that the prosecutrix knew Danny, that he was a Russian and she had already announced that she is bringing him to Goa from the WhatsApp messages bearing Nos.91559 to 91572 .

318. (i).- The below quoted WhatsApp message sent by the prosecutrix to PW15 on 31/10/2013 also clearly shows her intention, in advance, of staying back in Goa post Think, and shows up entirely as a lie her narrative of being traumatised and disgusted by the accused and Tehelka and her abandoning her duties and

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choosing to stay on in Goa as a result. Instead it shows that she had never intended to return to Bombay as per schedule and had informed no-one, nor taken leave.

91975	"Outgoing message"	I'm going to take two days off post think to stay in goa and say bye in any case
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(ii).—The WhatsApp messages bearing Nos.93978 to 94040 exchanged between the witness and PW15 Harsimran Gill on 4/11/2013 also clearly reaffirm that the prosecutrix had planned to stay in Goa with Danny, post THINK.

(iii).--The WhatsApp messages bearing Nos.94066, 94077, 94079, 94082, 94084, 94089, 94092 to 94106 exchanged between the Prosecutrix and PW15 Harsimran Gill on 4/11/2013 also clearly indicate that the Prosecutrix had decided in advance to stay back in Goa after THINK with PW15 and return to Mumbai together later.

(iv).--The WhatsApp messages bearing No. 94807 to 94844 exchanged between the prosecutrix and PW15 Harsimran Gill on 5/11/13, also clearly prove that the prosecutrix had always planned to stay in Goa with Danny

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post THINK and is only using the allegation of sexual assault to make it appear like a necessary escape for the sake of her peace of mind when it was always a pre-planned, premeditated trip.

319. The prosecutrix has admitted that on the night of 06/11/2013 she did not stay at the Goa International Centre and that on the night of 06/11/2013 she stayed somewhere near Ashvem, Morjim. PW15 has stated that he got back to the hotel at 1:30 am. The prosecutrix has claimed that she does not recollect the time when she left for Ashvem on the evening of 10/11/2013, at what time she reached Ashvem and at what time she returned back to Panaji from Ashvem, but she returned back on the night of 10/11/2013. She has stated that she went to Ashvem Beach on 11th morning from Panaji, but she does remember even by approximation at what time she reached Ashvem from Panaji on 11/11/2013. The photograph at page 11 of exhibit 681(1) and the image bearing no. IMG-20131112-WA0003.jpg clearly shows the prosecutrix with Danny, and it is apparent from the date stamp in the image file SC (Ors) 10/2014

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name that the same was taken on 12/11/2013. The presence of the prosecutrix in Goa on those dates is basis of her premeditated plan and not on account of trauma she claimed to have undergone just prior to this moment.

320. PW26, Martha Fernandes, the receptionist of Hotel Casa Paradiso, Panaji, has stated that in the room at Casa Paradiso there are two single beds and that at night time there are two boys of Goan origin on duty. She has further stated that both the boys were available at the hotel when IO Sunita Sawant came to the hotel for investigation and that her statement as well as the statement of the two boys was recorded by PI Sunita Sawant. She has further stated that at the reception there is a CCTV camera which was in working condition at that time and that PI Sunita Sawant had asked her for the CCTV footage and she had handed over the same to PI Sunita Sawant. She has further stated that only two persons, Aastha and Harsimran, were staying in the room booked at Casa Paradiso and that friends were visiting the room in the daytime. She has further stated that if an



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extra person wants to stay in the room, extra charges have to be paid and that an amount of Rs.5,200/- was paid towards the stay of two people in the room for four days. The above evidence therefore clearly shows that the prosecutrix did not stay back in Goa because she was traumatised, but because she had always planned to stay in Goa with her Russian boyfriend Danny.

321. PW53 mother of the prosecutrix has to be and is an interested witness and therefore her testimony is subject to corroboration from other witnesses and the deposition is to be tested, on the fact of whether the natural conduct of a parent and of a mature and deeply concerned person in the same circumstances would have been similar to that of PW53. It is the case of the Prosecution as stated by the prosecutrix that the prosecutrix narrated the alleged incidents to her mother (PW53) on 9.11.2013. Further, it is stated that PW53 was staying at that time in Mumbai at the prosecutrix's flat and that further, she was going to be joined by two of her colleagues who would also be staying in the same flat,

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which is why the prosecutrix did not return to Mumbai and stayed at Goa. Further, it is stated that PW53 and her colleagues were to attend a conference and exhibition in Mumbai for which reason her colleagues and she were to stay at her daughter's, i.e. the prosecutrix's flat. PW1, the prosecutrix, in her examination-in-chief stated that her mother was staying with three colleagues at her flat in Mumbai and that at the International Centre, Goa she packed her belongings, checked out of the International Centre and was ready to go home, at this time the prosecutrix realised that her mother was staying in Mumbai in her one bedroom flat along with three of her colleagues whom she had never met.

322. PW53 has stated in her examination-in-chief that she had told the prosecutrix that two of her colleagues from Bangalore were to stay with her for the work from 11.11.2013 to 15.11.2013 in the flat of the Prosecutrix.

323. PW53 stated that the conference and the exhibition started from 11.11.2013 and concluded on
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15.11.2013 and that on 09.11.2013 & 10.11.2013 she was alone in Mumbai.

324. PW53 though was informed about the sexual assault by her daughter; PW53 did not change any of her plans to offer the most natural support to her traumatised daughter, which is clear from her deposition.

325. PW53 stated that the welfare of her daughter was more important, she did not attempt to either take leave or make alternate arrangements so that she could be with her daughter during this horrific time. It is pertinent to note that PW53 did not even make a request to her company for personal or emergency leave.

326. PW53 did not also attempt to make alternate arrangements for her colleagues to stay in Mumbai so her daughter could return home to be with her, despite there being an allowance from the company for all of them to book individual accommodation and there were still two days before the arrival of her

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colleagues so as to make this the easiest and most natural option.

327. The evidence on record shows that the prosecutrix did not meet PW53, her mother, after THINK 2013 was over but contrary to her narrative that this was because her mother was staying with colleagues in her apartment. It is already clear from the WhatsApp messages that the prosecutrix had made plans in advance to stay on in Goa with Danny and had also already made plans to party with Biki for which too there is WhatsApp evidence in the prosecutrix's own words, and that the alleged incidents of 7.11.2013 and 8.11.2013 in no way changed her plans or her mother's plans. The conduct and attitude of PW53, the mother of the prosecutrix towards her speaks volumes about the state of trauma the prosecutrix was in. Such circumstantial evidence which does not support the case of the prosecution and the testimony of the prosecutrix cannot be relied upon without corroboration and hence there is a doubt created considering the facts and circumstances discussed above

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and the allegations made by the prosecutrix cannot be said to have been proved beyond reasonable doubt.

328. It is submitted by the advocate for the accused that the present case is an unambiguous and blatant illustration of unfair investigation conducted by the Investigation Officer (IO) in order to implicate the present accused. All the evidence/documents that conclude and prove the innocence of the Accused have been intentionally suppressed, and any line of questioning that can contradict, challenge or prove as outright false the Prosecutrix's version has simply not been conducted so that it is ensured that any such circumstances and evidence in favour of the Accused do not see the light of the Court.

329. It is not merely well-settled law but a fundamental principle of jurisprudence and of our justice system itself that the Right to Fair Investigation is guaranteed to Accused under Article 21 of the Constitution.

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330. The Hon'ble Supreme Court in the case of *Vinay Tyagi vs Irshad Ali @ Deepak & Ors* reported in SCC 2013(5) 762 has been held;

"48. What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons."





In Sathyavani Ponrani v. Samuel Raj, 2010 (4)

CTC 833, while dealing with fair investigation, this Court has held that the same is mandatory under Articles 14, 21 and 39 of the Constitution of India, wherein it has been held;

"66. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the Accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would be in violation of Article 14 of the Constitution."

The Hon'ble Supreme Court of India (C.B.) in

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Mukesh Singh V/S State (Narcotic Branch Of Delhi) held as follows -

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab, 2018 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically over ruled.



331. The view of the law laid down by the Hon'ble Supreme Court is that not only would such investigation be a violation of the Accused's constitutional



right, it is an utter violation of his fundamental right to equality as well as a violation of his human rights.

332. The IO has in some cases, such as the CCTV footage of the first floor of Block 7 of the Grand Hyatt, entirely destroyed the evidence, knowing that it is necessary for the Investigating Officer to gather all the evidence through investigation

333. The Investigating officer has committed omissions and commissions while conducting the investigation in the present case, wherein the IO has done no investigation on crucial and vital aspects of the present case.

334. PW70 has admitted that she did not move any proposal before her superiors that she being the complainant the investigation should be handed over to some other officer, and claimed that her superiors directed her to investigate the offence. However, she admitted that her diaries do not reveal that she had any discussion with her superiors about the investigation

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being handed over to some other police officer, she being the complainant in the case.

335. PW70 has stated that PI Sudiksha Naik was the only Lady Police Inspector besides her who was attached to the crime branch at the time of the registration of the present offence.

336. The above evidence of PW70 therefore clearly shows despite the availability of another Lady Police Inspector of the Crime Branch, the Investigating Officer and her superiors mala fide retained the investigation with PW70 who was the complainant.

337. The IO viewed vital CCTV footage of the guest lifts of the first floor of Block 7 of 7/11/2013 on 21.11.2013 (before registration of FIR) and knowing that the said CCTV footage shows the accused and the prosecutrix exiting the lift during the relevant 2 minutes on the first floor on 7/11/2013, and that the same would exonerate the accused, and despite the fact that the DVR containing the CCTV footage could and should have been

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attached by the IO at the earliest to preserve crucial CCTV footage, the IO appears to have deliberately delayed seizure of the DVR until the 29.11.2013 and in the meantime, destroyed the CCTV footage of the first floor of 7/11/2013, thereby destroying clear proof of the Accused's defence. As the said CCTV footage of the first floor has been destroyed, the DVR produced before the Court, contains no files containing the CCTV footage of the first floor of the guest lifts of Block 7 of 7/11/2013.

338. The IO gave directions to other Investigating officers to download the CCTV footage only of the ground and second floor of the guest lifts of 7/11/13 from the DVR of Block 7, and therefore PI Praveen Gawas on 25/11/2013 downloaded only the CCTV footage of ground and second floor and not of the first floor of the guests lifts of 7/11/2013, to destroy all traces of the CCTV footage of the first floor. The IO never sealed the DVR room in which the DVR containing the said crucial first floor footage was housed.

339. The IO did not write in her Case Diary the
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instructions given by her orally to P.I. Praveen Gawas and PSI Laxi Amonkar during the investigation, in order to remove all traces of instructions to visit Grand Hyatt to tamper and destroy the first floor footage.

340. Though the I.O. did not receive the video recordings of the CCTV footage of the first floor of the guest lift in Block 7 of 7/11/13 from the CFSL, no efforts were made to get the same, as she knew it was already destroyed.

341. The I.O. did not conduct any investigation to find out why the CFSL did not find any video recordings of the CCTV footage outside the guest lifts of Block 7 of the first floor of 7/11/2013 and 8/11/2013, knowing that it is already destroyed, and there is no specific reason for not doing the same.

There is no proof produced by the I.O. to show that the attachment of the DVR (containing unedited CCTV footage of Block 7) was informed to the court during investigation.

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342. The I.O. did not supply a copy of unedited CCTV footage of Block 7 to the Accused, due to which the Accused had to approach the Hon'ble Supreme Court and the Hon'ble Supreme Court directed the prosecution to provide clone copies of the unedited CCTV footage to the Accused, which was not done for two years and a clone copy of the CCTV footage was finally handed over to the accused in 2016.

343. The I.O. claimed that she is not aware of the term "hash value" in relation to electronic evidence. The IO also did not find out why PI Praveen Gawas did not generate the hash value of the contents of the DVR at the time of attachment of the DVR on 29/11/2013, though it was done regarding the CCTV footage downloaded from the DVR on 25/11/2013. It is crucial to note that the hash value certifies that the evidence ensures the integrity of the digital evidence and ensures that should there be traces of digital manipulation in the evidence after, the hash value will offer a trail of such manipulation. It is pertinent to note that PW14 has not overruled the SC (Ors) 10/2014



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possibility of the contents of the DVR being tampered.

344. The I.O. (PW70) during the Scene of offence panchanama on 28/11/13 did not ask the Prosecutrix to show, which button was pressed by the Accused on the lift panel to keep the lift in circuit during the incident of 07.11.2013. This is not mere detail but the heart of the prosecution case, since It is the categorical case of the Prosecutrix that the lift door did not open even once during the two minutes of the alleged incident as the Accused pressed a button on the lift panel to keep it in circuit.

345. The I.O. (PW70) during the scene of offence panchanama did not verify the operation and function of any of the buttons of the lift panel of Block 7; a glaring and deliberate omission in continuation of the crucial nature of this evidence.

346. The I.O. has not verified during the scene of offence panchanama whether the doors of the lift could be prevented from opening on any floor by pressing a

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button on the lift panel. Till date the IO has not produced any empirical evidence to show that doors of the lift could be prevented from opening on any floor by pressing a button on the lift panel.

347. The I.O. did not verify during the scene of offence panchanama whether the lift could be kept stationary by pressing a button on the lift panel. Till date the IO has not produced any empirical evidence to show that a button on the lift panel can keep the doors closed when the lift is stationary between floors, even though further investigation was conducted by the IO in November and December, 2020.

348. The I.O. has not investigated and verified during the scene of offence in the presence of panchas, as to how the buttons on the lift panel could be pressed to keep the lift in circuit and preventing the doors from opening on any floor, even though further investigation was conducted by the IO in November and December, 2020.

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349. The I.O. did not verify during the scene of offence whether the buttons on the lift panel could be pressed to facilitate commission of any crime. Till date the IO has not produced any empirical evidence to show that the buttons on the lift panel could be pressed to facilitate commission of any crime, even though further investigation was conducted by the IO in November and December, 2020. Although the IO was assisted by PI Praveen Gawas, PI Sudiksha Naik, LHC Rita, PC Anand Tuenkar, HC Harinam Naik, PSI Laxi Amonkar, DySP Sammy Tavares and PSI Mahindra Bandhari.

350. The I.O. admits that during investigation, verification of the operation and the functions of the lift buttons of the guest lifts of Block 7 during the scene of offence panchanama was not done though the same was important in the present case.

351. The I.O. has not conducted any investigation to verify whether the emergency button/switch of the guest lift in Block 7, is a toggle switch or push switch.

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352. The I.O. has not conducted any investigation to verify the distance between the call buttons i.e. G, 1 and 2 and the emergency red button on the lift panel of the guest lifts of Block 7.

353. The I.O. did not investigate the fact that there is an intercom connected inside the lift which becomes operational in case of emergency. The IO has not conducted an investigation to verify the group control system of the lifts in Block 7, to check whether when one lift is occupied and has left the ground floor, does the other lift if idle and unoccupied come immediately to the ground floor and vice versa. This is vital to establishing the programmatic behaviour of the lifts during the incident.

354. The I.O. did not seek a formal report in writing from Mitsubishi about the working of the guest lift's group control system and the emergency buttons pertaining to the guest lifts of Block 7. The IO did not attach the technical manual available with Mitsubishi of

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the guest lifts installed in Block 7 of the Grand Hyatt, though prosecution witnesses claimed it contained details of the function of the emergency button.

355. The I.O. did not question the Prosecutrix on 26.11.2013 whilst recording her 161 statement about what the Accused did on the lift panel with his hands during the alleged incident on 07.11.2013 and how the Accused pressed the lift buttons of the lift and in what manner the Accused pressed the lift buttons.

356. The I.O. has not conducted any investigation to verify and ask the Prosecutrix the very basic question of where inside the lift the Prosecutrix was standing during the sexual assault on 7.11.2013 and 8.11.2013, during the scene of offence panchanama.

357. The I.O. has not conducted any investigation to verify whether the lights from inside the guest lifts of Block 7 on ground floor reflect on the floor outside the lift when the lift doors open. This too is vital to establishing whether the lift opened at all during the

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two minutes of the alleged incident, which the Defence has during cross established through the CCTV footage that the left lift did in fact open twice on the ground floor during the relevant period, though the prosecutrix claimed that they absolutely did not open.

358. The I.O. has not conducted any investigation to verify how many times the guest lift on the right side in Block 7 opened on the ground floor during the two minutes of the alleged incident of 7.11.2013.

359. The I.O. did not investigate how many times the lights outside the left guest lift of Block 7 blinked/flushed on the ground floor during the two minutes of the alleged incident of 7.11.2013, which would also show how many times the left lift opened on the ground floor.

360. The I.O. did not conduct any investigation to verify the correlation of the blinking of the lights outside the lift and the shining of the light from inside the

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lift on the floor outside the lift with the opening and closing of the doors of the guest lifts on the ground floor of Block 7.

361. The I.O. did not view the CCTV footage of the left guest lifts of the ground floor of Block 7 pertaining to the 2 minutes of the alleged incident of 7.11.2013 and did not investigate and verify how many times the light of the left guest lift blinks on the opposite wall, i.e., the wall of the right lift.

362. The I.O. did not show the CCTV footage to any lift technicians to understand and investigate and find out how many times the guest lifts of Block 7 opened on the ground floor during the 2 minutes of the alleged incident of 7.11.2013.

363. The I.O. did not show the opening and closing of the right side guest lift of Block 7 on the ground floor during the 2 minutes of the incident of 7.11.2013 to the Prosecutrix and sought no explanation from her about her disproved claim that the lift doors did not open, which

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wholly turns the case since it renders the plausibility of an attack on the prosecutrix absolutely null.

364. The I.O. has not conducted any investigation to calculate the time taken by the lift to reach from the ground floor to the second floor during the scene of offence panchanama. The IO did not find out during the investigation how long the lift was on the ground floor of Block 7 during the alleged incident of 7.11.2013 after the Prosecutrix and the Accused had entered the lift.

365. The I.O. has not conducted any investigation to check the lift control room in Grand Hyatt and record the statements of the personnel of Grand Hyatt who monitor the real-time functioning of all the lifts of Block 7 from the lift control room and further no investigation was done relating to the lift control panel on which there are indicators to indicate the direction in which all the lifts of Grand Hyatt are moving at any moment, as well as to indicate whenever the emergency button is

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pressed. This, despite the fact that if the lift had been stalled by the Accused as per the claim of the Prosecutrix, this would immediately have reflected on the panels in the lift control room, which as per evidence on record is manned by two people 24/7.

366. The I.O. verified the operation and functioning of the emergency red stop button inside the lift for the first time in November 2020 for 7 years after the registration of the First Information Report - on the pretext of finding out whether Grand Hyatt had re-opened in Covid times claiming that the prosecution contemplated filing application under section 310 of Cr.P.C. and conducted further investigation, without taking permission of the Court, to fill in the lacunae in the prosecution case. It is pertinent to note that the prosecution never filed the application under section 310 Cr.P.C.

367. The I.O. did not take any lift technician to any other establishments where Mitsubishi lifts are

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installed in order to receive a demonstration of the functioning of the emergency red stop button.

368. The I.O. did not ask any lift technician to re-activate the emergency red stop button of the guest lifts of Block 7 of Grand Hyatt at any time to understand the functioning of the said emergency red stop button. The IO did not conduct panchanama of the inspection of the guest lifts of Block 7 on 12.11.2020. The IO recorded belated statements of witnesses during the further investigation. The IO did not make a station diary entry about her visit to Grand Hyatt on 12.11.2020.

369. The I.O. has not conducted any investigation to verify that all the buttons of the guest lifts of Block 7 can be programmed and re-programmed multiple times to change the functions of the said buttons, and what those functions might be. The IO did not compare the statements made by the Prosecutrix in her testimony with the CCTV footage of the guest lifts of Block 7 of 7.11.2013 and 8.11.2013 at the time that the IO drafted the complaint.

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370. The I.O., during her investigation, did not verify before registration of the FIR that the lift could be kept in circuit as stated by the Prosecutrix in her testimony, and there is no specific reason given for the same.

371. The I.O., during her investigation, did not depute any other police officer to verify before registration of the FIR that the lift could be kept in circuit as stated by the Prosecutrix in her testimony, and there is no specific reason for the same. The IO admits that there are contradictions on viewing the unedited CCTV footage of 7.11.2013 and 8.11.2013 and the statements made by the Prosecutrix in her testimony and yet no supplementary statement is recorded by the I.O. in view of the same. It is crucial to note that the contradictions are often so glaring that the exact opposite of what the Prosecutrix is claiming actually happens on screen yet, the IO did not even question the Prosecutrix on the same.



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372. The I.O. did not compare the statement made by the Prosecutrix in her statement dated 26.11.2013 with the CCTV footage, which constitutes the most neutral evidence in the case. The IO did not find it necessary or relevant or important to refer to the CCTV footage while recording the statement of the Prosecutrix despite already having viewed the CCTV footage and being aware that there were glaring contradictions between the footage and the account of the Prosecutrix.

373. The I.O. failed to attach from the Prosecutrix or any other witnesses the printout of the email attachment 'nishitatestimony.docx' attached to the email dated 15.11.2013 of the Prosecutrix to Ishan (PW11), Masooma and others, which was a first written draft of her complaint to know what was first written by the prosecutrix.

374. The I.O. did not find out why there was a difference in the file size between the aforesaid Nishita testimony.docx and testimony.docs, which signals

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changes, edits or improvements between the two versions.

375. The I.O. did not carry out any investigation to find out what ambiguity was removed by the Prosecutrix in her first written version emailed to Masooma Ranalvi on 15.11.2013.

376. The I.O. came to know after recording the statement on 26.11.2013 that the Prosecutrix had, on 15.11.2013 written down all details of the alleged incidents and yet the same was neither asked to be seen by the I.O. nor attached as evidence by the I.O.

377. The I.O. did not find out how the Prosecutrix knew that she was inside the lift for 2 minutes during the incident of 7/11/13 when the IO recorded her statement on 26.11.2013. The IO has not conducted any investigation or questioned the Prosecutrix on why she dropped all mention of Nikhil Agarwal from her complaint of 18.11.2013, though the prosecutrix admitted that in her email dt. 16/11/13 she had stated that Nikhil Agarwal

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was the first person she met and spoke to in the minutes after the alleged incident on 7.11.2013.

378. The I.O. also did not record the statement of Nikhil Agarwal though Nikhil Agarwal had communicated his willingness to give his statement to the police. The I.O. has not conducted any investigation or questioned the Prosecutrix to show the I.O. the spot where she met Nikhil Agarwal on the night of 7.11.2013 after the incident, during the scene of offence panchanama.

379. The I.O. has not verified which software was used to operate the computer through which the printouts were taken during the section 27 of Indian Evidence Act disclosure panchanama.

380. The I.O. did not seal the DVD which contained the voice recordings of PW45 Shoma Chaudhury which was handed over to the I.O. by the Prosecutrix.

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381. The I.O., while attaching the phone of the Prosecutrix, did not play to the panchas the recorded conversations between the Prosecutrix and PW45 Shoma Chaudhury through the Prosecutrix's Phone. The Phone was not checked by I.O. to verify whether said recordings are available on the phone or not. The I.O. did not verify whether the phone contains the app 'automatic call recorder'.

382. The I.O. did not compare the voice recordings from the phone of the Prosecutrix with the voice recordings of the Prosecutrix and PW45 contained in the DVD given to I.O. by the Prosecutrix. I.O. also did not find out from the CFSI the reason for not furnishing the voice recordings from the mobile of the Prosecutrix.

383. The IO did not take any voice samples from the Prosecutrix or PW45 to verify whether the voice recordings are from the same persons or not. The IO at no point during the investigation questioned or recorded the statement of Sunaina Kumar, who was the
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roommate of the Prosecutrix at the Goa International Centre, and could attest to the Prosecutrix's account, state of mind and comings and goings.

384. The I.O. did not make any attempt to attach the emails from the server of Tehelka located in Noida, UP despite the fact that all the email correspondence between all Prosecution witnesses and the Accused was done via Tehelka.com, which are relied-upon documents by the prosecution, and the I.O. has not procured all the relied-upon emails from the server of Tehelka.

385. It is well settled that some defects in investigation cannot result in acquittal of the accused and even if the investigation is illegal or suspicious the evidence will have to be scrutinised independently of the impact of such investigation. Since otherwise a criminal trial will plummet to the level of Investigating Officers ruling the roost. The settled proposition that the acquittal of the accused cannot result due to defects in the

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Investigation cannot be disputed. However, a duty is also cast on the Investigating Officer to conduct fair investigation in the matter to bring out the truth. The Investigating Officer in the present case although have collected the CCTV footage of the ground, first and second floor but the footage of the first floor cannot be found for the perusal of the court which is a material lapse by the Investigating Officer.

386. Upon considering the other evidence on record the benefit of doubt is given to the accused as there is no corroborative evidence supporting the allegations made by the prosecutrix and the deposition of the prosecutrix also shows improvement and material contradictions and omissions and change of versions which does not inspire confidence.

387. Hence in view of the discussion made hereinabove the prosecution has failed to discharge the burden of proving the guilt of the accused beyond reasonable doubt and thus I answer the points framed

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at serial nos. 7(a) to 7(d) and 7(f) in the negative. Hence I pass the following order:

ORDER

The accused shall stand acquitted for the offences punishable under sections 376(2)(f), 376(2)(k), 354, 354 A, 354 B, 341 and 342 of the Indian Penal Code.

Accused as per section 437A of Cr.P.C. the accused is directed to furnish personal bond and surety for an amount of Rs.20,000/- (Rupees Twenty Thousand Only) to appear before the higher court as and when such court issues notice in respect of any appeal or petition filed against the judgment of the court and such bail bond and surety shall remain in force for 6 (six) months.



*mf

21/5/2021
(Kshama M. Joshi)
Additional Sessions Judge,
Mapusa.



CERTIFIED TRUE COPY

Bhargava
25/05/2021
Superintendent
District Judge-1
Mapusa-Goa

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Checked with original by TCC