

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. A. NO. 419/2001

Date of pronouncement 01 July, 2009

MARUTI Appellant
Through : Mr.Aman Ahluwalia, Advocate.

Versus

STATE (NCT OF DELHI) Respondent
Through : Mr.M.P. Singh, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the Judgment should be reported in the Digest? **YES**

G.S. SISTANI, J.

1. The present appeal is directed against the judgment dated 19.09.2000 and order on sentence dated 23.09.2000, passed by the learned Additional Sessions Judge, Delhi, in FIR No. 134/99, PS Kalyan Puri, under section 376, Indian Penal Code, 1860 (hereinafter referred to as, "IPC"), by virtue of which the appellant was sentenced to undergo Rigorous Imprisonment for five years with a fine of Rs.5,000/- and in default of which, the said appellant was directed to undergo a further Simple Imprisonment for a period of one year.
2. The facts of the case as noticed by the learned Trial Court, briefly stated are.
3. On 27.05.1999, Smt. Bedo wife of Shri Satpal made a statement before the police that at about 11 AM on 27.05.1999 she went to look for her mentally retarded girl,

(name withheld, hereinafter referred to as, “the victim”) at her jhuggi in 18 block, Kalyanpuri Delhi but she did not find her there. She went to the jhuggi of her neighbour, Sh. Maruti (appellant herein) and saw that Salwar of her daughter victim was put off and she was lying on the cot (palang) of Maruti, who was lying naked on her and was doing the wrong act. After seeing her, Maruti stood up and immediately covered himself with the help of a towel. SI Puran Chand recorded the statement of Smt. Bedo and made his endorsement thereon. After completion of investigation, the police filed the challan before the concerned Magistrate for trial of the appellant for the offence under section 376, IPC. Post trial, the appellant was found guilty of the said offence.

4. The prosecution in support of its case examined eleven (11) witnesses. Five witnesses were examined by the defence. Statement of the appellant was also recorded under section 313 of Cr.P.C. It would be useful to discuss the evidence of some of the material witnesses in detail.
5. PW-1, Smt. Bedo, w/o Sh. Satpal, deposed in her examination-in-chief that she is illiterate so she does not remember the date and month of the incident but it was about five–six months ago in this year. At about 10:30 AM she went to see her daughter to provide her food as her daughter was mentally upset. She had called her daughter in her neighbourhood but she was not there. The jhuggi of the appellant is situated after one jhuggi of her jhuggi. The jhuggi which was situated in front of the other jhuggi was curtained. She entered in the said

jhuggi after pushing the curtain but her daughter was not there. Thereafter she had pushed another curtain and she saw her daughter (victim) was lying on a *palang* in the said jhuggi and her legs were down from the *palang* and her *salwar* had also been put off upto knees and Maruti (appellant) was not having *baniyan* and *kacha* on his person and he was over her daughter. After seeing her, he immediately separated from her daughter and put a towel around him. She immediately called three–five persons from the neighbourhood and told them that appellant, Maruti was lying naked on her daughter. Thereafter, she went to the police station to lodge a report. From the police station two police constables accompanied her and they all came to the jhuggi of Maruti and the appellant was taken by them to the police station and her daughter was also taken by the police. Thereafter police recorded her statement in the police station, the same is Ex.PW1/A which bears her signature at point A. Police took her daughter for the medical examination and she remained sitting inside the police station till her daughter came back from the hospital. Thereafter she along with her daughter came back to her jhuggi. Her daughter's age was about 23 or 24 years.

6. In her cross-examination by learned APP for the State, PW-1 deposed that it was correct that when she saw Maruti he was laid down naked on her daughter and committing wrong act with her daughter. (witness stated the wrong acts means which is done by husband and wife).

7. In her cross-examination by learned counsel for the appellant, PW-1 deposed that before putting her thumb impression on her statement, the police read over and explained the statement to her. PW-1 deposed that it was correct to say that she had stated in her statement that the door was open but there was curtain on the door. She was confronted with the statement Ex. PW 1/A where it was not so recorded. As per PW-1, in the jhuggi of Maruti, the appellant was residing with his wife, son, daughter-in-law, and two children. She voluntarily stated that at the time of the incident none was present in the jhuggi. The wife of Maruti used to work in different *kothis* and the wife of his son remained in the jhuggi but at the time of the incident, the wife of his son had already gone to her parental house. In front of the jhuggi of Maruti there was a jhuggi of a Madrasi, but she deposed that she did not know his name. On the left side was the jhuggi of Babu Rao, and on the right side was that of Nanu. PW-1 deposed that she went to the police station at about 10:30 a.m. and returned back to the spot alongwith the police staff after about 50 minutes. PW-1 further deposed, *"I do not know the names of persons who remained in the jhuggi of the appellant when I left the jhuggi for the p.s. When I called the neighbourers some neighbourers came over there and I handed over the accused in the custody of Gulshan and there was one lady Sumitra present there. But I do not know the others name. I have been residing there for last about 15 years."* PW-1 deposed that it was incorrect to suggest that she was

deposing falsely or that she did not see anything with her own eyes or that she did not enter in the jhuggi of Maruti, appellant. She, however, admitted that her daughter had been a victim in another case of the same nature.

8. PW-2, victim, d/o Satpal. The trial court observed that this witness was suffering from mental retardation and a certificate to this effect was attached in the file. Therefore the trial court put some questions to the victim to reveal her competency.

“Q. Why did you come in the court today?”

A. I came to court alongwith my mother to depose against Uncle and witness pointed towards the appellant.”

Thereafter the trial court observed,

“In the above reply of the witness the court is satisfy as the witness is competent to make her statement in the court therefore her statement is recorded.”

PW-2 deposed, *“accused/uncle [] had committed Galat kaam with me. He has committed Galat Kaam for long back. My statement was recorded in the court prior to this statement.”*

In the cross-examination by learned counsel for the appellant, PW-2 deposed, *“[m]y father did not tell me to tell in the court about the Galat Kaam. I have deposed my self about this today in the court. My mother did not tell me to say about Galat kaam Voll. Said Papa. My marriage was solemnized but I was deserted by my husband as my husband had got another*

marriage. 'Mere Pati ne Dusri Shadi Kar Lee'. Police interrogated me."

9. PW-3, Gulshan, r/o jhuggi no. 77, Kalyan Puri, Delhi deposed that on 27.05.1999, he was present at his shop and on that day at about 11 AM, Bedo came to him to accompany her to the jhuggi of Maruti, appellant. There Bedo asked him to detain the appellant as she was going to call the police. Police reached over there and he handed the Maruti, appellant to the police. Police conducted the personal search of Maruti, appellant vide memo Ex.PW3/A which bears his signature at point A.
10. In his cross-examination by learned counsel for the appellant, PW-3 deposed that the Police reached at the spot at about 11 or 11:30 AM. When he reached the jhuggi of Maruti, daughter of Smt. Bedo was already present there alongwith Maruti. As per PW-3, his shop is situated at a distance of 4-5 jhuggis from the jhuggi of Maruti. He stated to be familiar with Bedo and of having visiting terms. Apart from him, 3-4 persons had also reached the jhuggi of Maruti namely Chotu, Savitri and other persons whose name he did not remember. PW-3 deposed that he has been residing there since last about 12 years. There are the jhuggis of Chotu, Babu, Gopal between his jhuggi and the jhuggi of Maruti. PW-3 denied THE suggestion that he was deposing falsely.
11. PW-5, Dr. Kalpana Kumar, SDN Hospital, deposed in her examination-in-chief that on 27.05.1999 at 3:50 PM, patient, victim d/o Satpal, aged 25 years (approximately) was brought

by lady constable Arti, P.S. Kalyanpuri and was referred to her for gynae checkup and opinion. As per PW-5, she examined the patient with the alleged history of rape by someone and opined, *"On local examination there was no fresh injury seen on vulva or breast. Hymen seems ruptured, old tears present, vagina admits two fingers. Uterus anteverted, normal size mobile fornix clear. Patient was not telling menstrual history properly. Vaginal swab taken..... Salwar was also sealed.* She was referred to IHBAS for mental status." PW-5 further deposed that the MLC No. 3502/99 dated 27.05.1999 is Ex.PW5/A which is in her handwriting and bears her signatures at point A.

12. PW-6, SI Puran Chand stated that on 27.05.1999, he was posted at P.S. Kalyan Puri. On 27.5.1999 Smt. Bedo came in the police station with her daughter-victim and made a statement before him, which is Ex.PW1/A. After hearing the statement he sent the victim for medical examination. In the meantime PW Gulshan Kumar came to him alongwith the appellant who made a statement before him that the appellant Maruti had committed rape with the victim. Thereafter he sent the appellant for his medical examination alongwith constable Khem Chand to SDN Hospital. Thereafter he went to the place of occurrence at jhuggi no. 55, Block no. 18, Kalyanpuri where the offence of rape was committed and he prepared the site plan Ex.PW6/B with the correct marginal notes at the pointing out of complainant Bedo. Appellant Maruti was also interrogated and he made a disclosure statement Ex.PW6/C.

13. PW-6, in his cross-examination by learned counsel for the appellant submitted that the complainant herself came to the police station for lodging a report. At that time prosecutrix (victim) was with the complainant.
14. PW-7, Sh. S.K. Sharma, M.M. deposed that on 28.05.1999, he was marked an application of I.O. Puran Singh for recording the statement of the prosecutrix under section 164 Cr.P.C. On the same day, prosecutrix (victim) was produced before him. She was suffering from a mental disorder. However he questioned her and observed that she was not in a fit state of mind nor was she capable of giving rational answers to the questions put to her. His observation is Ex.PW7/B. The questions and answers made by the prosecutrix are Ex.PW7/C. PW-7 also stated to have given a requisite certificate, which is Ex. PW7/D and bears his signatures at point A.
15. PW-8, Constable Khem Chand deposed that on 27.05.1999 he was posted in P.S. Kalyanpuri. As per PW-8, he alongwith the I.O. of the case and the appellant went to the place of occurrence where the appellant pointed out the place of occurrence as well as made a disclosure statement that he had committed rape on a mental girl. The disclosure statement is Ex.PW6/C which bears his signatures at point A.
16. PW-10, Dr. A.K. Saini, SDN Hospital deposed that on 27.05.1999, Maruti, appellant was brought to him by constable Khem Chand and that he had medically examined him. It was stated by PW-10 that, *"[t]here was no external injury on his person. On local examination his genitalia secondary sexual*

characters were well developed. As per my opinion there was nothing to suggest that the accused was not capable of performing sexual act. He was advised to give his semen but he had refused to give. His undergarments were sealed with the seal of hospital and handed over to constable Khem Chand.” PW-10 deposed that he prepared the MLC No. 3448/99 dated 27.05.19899, the same is Ex.PW10/A and bears his signature at point A.

17. DW-1, Smt. Manda w/o Babu Ram, aged 27 years, r/o B-18, Kalyan Puri, Delhi, deposed that she knew Maruti, appellant as he was her neighbour. DW-1 deposed that in the month of May, 1999, five to six days prior to the day of the incident, a quarrel took place between Maruti and Bedo on some money transaction. In the month of May, 1999, Maruti was sprinkling water on the freshly constructed floor in his jhuggi. At that time, Bedo came to Maruti and stated that she had lodged a report as the appellant had teased her daughter. Smt. Bedo was the Pradhan of jhuggi locality. At that time she had raised an alarm ‘MERI BETI KO CHHERA HAI’, so she came outside, but there was no such thing.
18. In the cross-examination by learned APP, DW-1 deposed that she did not know the age of victim. It is correct that she was not having a fit state of mind. When the quarrel took place between Smt. Bedo and Maruti some locality people had gathered there. She was also there but she did not ask the cause of quarrel from Smt. Bedo or even from Maruti. Further it was correct that after quarrel, Smt. Bedo went to the Police

station and lodged a report. It was correct that in the quarrel, Smt. Bedo was saying that Maruti, appellant had committed *galat kaam*. It was correct that when police came at the spot, she and other people did not tell the police that quarrel took place on other matter not on the *galat kaam*. DW-1 further deposed that it was correct that when the quarrel took place she was inside her jhuggi and she came outside from the jhuggi after hearing the noise. Voluntarily stated that the quarrel took place on freshly constructed floor by the appellant in his jhuggi.

19. DW-2 Smt. Sumitra r/o jhuggi No. 55 Block No. 18, Kalyan Puri, deposed that she knew the appellant as he is her neighbour. On 27.05.1999, Maruti was sitting on the floor of his jhuggi. Some altercation was already going on from the last 9/10 days between Maruti and Smt. Bedo on some money transaction. Again said Maruti had constructed a floor in his jhuggi one day prior to 27.05.1999 and he was throwing water on that day. Smt. Bedo was demanding money from Maruti, thereafter the appellant was apprehended by the police and taken to police station.
20. In the cross-examination by APP for the State, DW-2 deposed that Maruti is not related to her. The difference between her jhuggi and that of Maruti is of three jhuggis. At that time she was sitting at the gate of her jhuggi and everything was visible from there. It was correct that when quarrel was taking place between Smt. Bedo and Maruti, she was inside her house and that after hearing the noise she came out of her jhuggi. It was

correct that the name of daughter of Bedo is 'victim' and she is half mad. It was incorrect to suggest that Maruti had committed *galat kaam* with the daughter of Smt. Bedo.

21. DW-3 Kamal Rao r/o B-18, Indra Camp Kalyan Puri deposed in her examination-in-chief that on 27.05.1999, she was giving tuitions to the children. She heard some noise of quarrel. Then, she came out from Budh Vihar and saw that Smt. Bedo was quarrelling with Maruti and she was demanding money as the appellant had constructed a floor in his jhuggi. At that time Smt. Bedo extended threat that if he will not give the money she will call the police and thereafter Bedo went to P.S. Police came at the spot and she again came out and saw that Maruti was taken by the police. As per DW-3, Smt. Bedo is Pradhan of the area and she used to harass the locality people as such.
22. DW-3 was cross-examined by learned APP for the State and DW-3 deposed that it was correct that at the time of quarrel, daughter of Bedo was also present there. It is correct that at that time Maruti was alone in the house. Again said his mother-in-law was present in the jhuggi. She denied the suggestion that mother-in-law of Maruti is residing in a separate jhuggi. DW-3 stated to have not heard that Smt. Bedo was saying that appellant had committed rape on her daughter and she only heard the demand of money.
23. DW-4 Smt. Sushila, Kalyan Puri, Delhi deposed that on 27.05.1999, at about 11 AM she was sitting at the door of her jhuggi and at that time Maruti was washing the newly

constructed floor in his jhuggi. In the meantime Pardhan Bedo came in front of the door of Maruti. Mother-in-law of Maruti was also inside his jhuggi. The daughter of Bedo was also there. Smt. Bedo was talking with Maruti on some money transactions but Maruti refused to give money to Bedo. Then Bedo started speaking loudly. And Bedo went to the police station. Maruti was apprehended by the police and was taken to P.S. with them then. Maruti, appellant has been falsely implicated in this case.

24. In the cross-examination by APP for the State, DW-4 deposed that the name of mother-in-law of Maruti is Gangu and she resides in a village in Maharashtra and she had come to the house of Maruti eight days prior to the incident but she did not know whether she came alone or with someone. Maruti has five Jhuggis which are adjoining to each other. As per DW-4, it was correct that Maruti and his mother-in-law were not sitting in one jhuggi. She denied the suggestion that in the quarrel Smt. Bedo was saying that Maruti had committed rape on her daughter. I had stated to the police that Maruti had not done anything and at that time police had assured me that they will release Maruti. Further stated that it was incorrect to suggest that she did not see any occurrence as alleged by her.
25. DW-5 Vishwas, Indira Camp, Kalyan Puri deposed that he knows the appellant as he resides in his locality. DW-5 stated to have heard noise of a quarrel from the house of Maruti and that Pradhan Bedo was saying something about money which Maruti refused to give to her. As per DW-5, he did not know as

to why Smt. Bedo was demanding money from Maruti. At that time Pradhan Bedo also extended a threat to Maruti to falsely implicate him in some case. She also said that she used to take money from all and further stated that she will lodge a report against Maruti.

26. In the cross-examination by APP for the State, DW-5 deposed that it was correct that when he heard the noise then he was attracted towards it, but he was not aware as to what happened before that noise. When he reached the place of noise he saw Smt. Bedo and her daughter were already present there. DW-5 also denied the suggestion that he was deposing falsely.
27. It is contended by learned counsel for the appellant that the judgment is based on surmises and conjectures. There are several discrepancies in the case of the prosecution and further that the appellant has been falsely implicated.
28. Learned counsel for the appellant submitted that the story of the prosecution is unbelievable. It is not apparent why – on not finding her daughter in the neighbourhood, PW-1 would walk straight into the curtained jhuggi of the appellant, which was two jhuggis away. Secondly, the sequence of events as narrated by PW-1 are extremely implausible. According to PW-1, on seeing the purported incident, she “immediately called 3-5 person from the neighbourhood” and told them that the appellant was “lying naked on her daughter”. Thereafter, she went to the police station. There is no reference to the whereabouts of her daughter, victim (PW-2), at this stage.

Contrarily, PW-1 has stated that she “tied the strings on her daughter in the presence of police. In the cross-examination, PW-1 admitted that it took her 50 minutes to go to the police station and return with the constables. Thus, if her version is to be believed, on seeing the appellant naked on top of her daughter, she left her daughter (with an untied salwar) in the same jhuggi with 4-6 other people (3-5 neighbours as well as the appellant), and proceeded to the police station. This, it is submitted is highly implausible.

29. It is also contended by counsel for the appellant that the evidence of the victim as well as her mother is unreliable besides the deposition of PW-1, even if accepted at face value, only alleges that when she walked into the jhuggi of the appellant, she saw him lying naked on top of the victim, doing “Galat Kaam”. “Galat Kaam” was further explained as that which is done by a husband and a wife and this at best would show that the appellant had attempted to rape the alleged victim. Learned counsel submits that the evidence of PW-1, by itself, even if accepted, does not conclusively show that there was penetration in the present case, and a husband and wife are capable of indulging in many activities where one lies naked on the other. The *sine qua non* of the offence of rape is penetration and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. In support of his contention, learned counsel for the appellant relies upon **Koppule**

Venkatarao Vs. State of Andhra Pradesh, reported at ***2004 Crl. Law Journal 1804***.

30. It is further submitted by learned counsel for the appellant that although both PW-1 and PW-3 admit that there were 3-4 other neighbours present in the jhuggi, none of these have been examined as prosecution witnesses. Sumitra, whose presence has been admitted by both PW1 and PW3, was examined as DW-2, and her version supports the appellant. Further the deposition of PW-3 cannot be relied on inasmuch as, PW-3 suggests that he handed over the appellant to the police when PW-1 returned to the jhuggi with the police constable. However, PW-6 (SI Puran Chand) states that PW-3 brought the appellant to him in the police station.
31. It is further contended that the MLC of the prosecutrix (Ex.PW5/A and PW5/B) contains notings of the Gynecologist which conclude that there was “no fresh injury seen on vulva or breast”. Thus, there is no medical evidence of recent sexual intercourse. Counsel submits that the MLC fails to note the presence of any traces of semen near the vulva or otherwise. This casts a doubt on the later FSL reports finding semen on the seized articles (salwar, underwear and vaginal swabs).
32. It is next contended that there are serious irregularities in the recording of the FIR (Ex.PW4/A). The incident is alleged to have taken place at 10.30./11 a.m. The FIR is formally recorded at 6.20 PM, as stated by PW4. PW4 states that he

received the ruqqa at 6.20 PM. The reason given by PW6 for waiting so long before forwarding the ruqqa, is that the prosecutrix was not medically fit and he wanted to wait for the medical examination report before registering the FIR. This explanation is extremely tenuous, and even if accepted, there is nothing in the MLC that should have caused PW-6 to register a case. The case should have been registered at the time PW1 made her original statement. Further, there is some doubt about whether the FIR was registered even at 6:20 PM on 27.5.1999. The FIR on the file of the lower court record does not bear any endorsement of the Magistrate showing the date and time on which the FIR was forwarded to the Magistrate. In addition, the FSL reports refer to the FIR as dated 28.5.1999, which is the day following the date of the incident.

33. Learned counsel for the appellant submits that reliance ought not to be placed on the FSL reports for the following reasons:
- a) PW11 (to whom the case file was entrusted for investigation) has deposed that the samples were not sent for forensic testing by him. Even as of the date of his first deposition, the samples had not been sent for testing. The PP sought an adjournment on the ground that the CFSL result had not been placed on file – but actually, the samples had not even been sent to FSL as on that date (the date of deposition is 1.2.2000, whereas the FSL Report notes that the samples were sent vide letter dated 21.2.2000). This delay is a gross abuse of the investigative process, and raises serious suspicion of tampering. Delay in sending samples has been

viewed as fatal to the case of the prosecution in the case of ***Prabhas Sarkar Vs. The State*** reported at **(2003) 2 CALLT 235 (HC)** b) there is nothing to match the semen found in the samples with the appellant. The refusal of the appellant to give a semen sample at the stage of medical examination cannot be held against him as the appellant has a fundamental right not to incriminate himself. c) no attempt was made to seize the towel which was allegedly wrapped around by the appellant.

34. Learned counsel for the appellant submits that the case of the prosecution is fraught with improbable and implausible facts, and is an outright fabrication. The correct facts have been put forward by the defense witnesses, who clearly state that the quarrel between the appellant and PW-1 was around a money transaction, and PW 1 has falsely implicated the appellant in the present case. Besides, the investigative process stands marred by serious lapses. There is no evidence to suggest that the appellant committed the alleged acts resulting in an offence punishable under Section 376 of the IPC.
35. *Per contra*, it is stated by learned APP for the State that not only the evidence of the victim, but also the evidence of the mother of the victim, who is the eye witness are trustworthy and reliable. He further submitted that the testimony of the victim as well as her mother is fully corroborated by the medical and scientific evidence, thus there is no shadow of doubt that the appellant had committed the offence.

36. I have heard learned counsel for the parties and minutely scrutinized the evidence on record. Learned counsel for the appellant has assailed the judgment and order on sentence *primarily* on the ground that the surrounding circumstances would show that rape on the mentally retarded daughter of the neighbour of the appellant was highly improbable. Evidence of the victim and her mother is unreliable, besides the evidence would at best show that the appellant had attempted to commit rape. Learned counsel has strenuously argued that the appellant has been falsely implicated in this case, on account of the fact that the mother of the victim was the *Pradhan* of the *Jhuggis* and the appellant had added another floor on his *Jhuggi* for which she was demanding money. In the testimony of the defence witnesses, they have deposed that the dispute between the appellant and the mother of the victim was relating to some money matter and not on account of rape on her daughter. Learned counsel for the appellant has strongly urged before this Court that there has been delay in sending the articles to the Forensic Science Laboratory and thus tampering cannot be ruled out.

37. The Supreme Court has observed that in rape cases a conviction can be based on the sole testimony of the prosecutrix if the same is reliable and trustworthy. In the case of ***Madho Ram and Anr. Vs. The State of UP*** reported at ***AIR 1973 SC 469***, the Apex Court observed that:

“The only rule of law is the rule of prudence, namely, the advisability of corroboration should be present in the mind of the judge or the jury, as the case may be. There

is no rule of practice that there must, in every case, be corroboration before the conviction can be allowed to stand.”

38. In the case of ***State of Rajasthan V. N.K.***, reported at **(2000) 5 SCC 30** the Supreme Court has observed:

“A plethora of decisions by this Court as referred to above would show that once the statement of the prosecutrix inspires confidence and is accepted by the Courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Courts 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. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor’s report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence.”

39. Similarly, in ***State of Rajasthan Vs. Biram Lal***, reported at **(2005) 10 SCC 714**, the Supreme Court held that if the sole testimony of the prosecutrix is free from blemish and implicitly reliable, then a conviction can be recorded on that basis. It was observed as follows:

“It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the Court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the Court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction.”

40. It would also be useful to reproduce the observations of the Supreme Court in the case of ***State of Punjab v. Gurmit Singh*** reported at **(1996) 2 SCC 384**. Regarding a rape victim the Apex Court held:

“8. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a 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 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 levelled 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 a par with the evidence of an injured witness and to an extent is even more reliable.....”

“21. 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. We must remember that 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, 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 courts should examine the broader 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 an 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.”

[Emphasis supplied]

“22. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details 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 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 accused 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 had 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.”

41. Thus in the case of ***State of Punjab*** (*supra*), the Apex Court has observed that the court should be sensitive while dealing with a case involving sexual molestation. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A word of caution has come to ensure that during cross-examination when the victim is required to repeat again and again the details of the rape incident, the Court should not sit as a silent spectator, to allow the victim to be harassed, humiliated, while she is asked to repeat her traumatic experience. In the same vein the Apex Court has also held that every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination.
42. Applying the settled position of law to the facts herein, it is seen that the SDM before whom the statement of the victim was recorded, had observed that the victim was not in a fit state of mind nor was she capable of giving rational answers to the questions put to her. The observation of the SDM is contained in Ex.PW7/B.
43. It would be relevant herein to reproduce Section 118 of the Evidence Act. The same reads as under:

“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by

tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

44. Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any other cause of the same kind. It has been held in the case of ***Siddhapal Kamala Yadav Vs. State of Maharashtra reported at (2009) 1 SCC 124*** that, “there are four kinds of persons who may be said to be non compos mentis (not of sound mind), i.e., (1) an idiot; (2) one made non compos by illness (3) a lunatic or a mad man and (4) one who is drunk. An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals; and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like, (Archbold's Criminal Pleadings, Evidence and Practice, 35th Edn. pp. 31-32; Russell on Crimes and Misdemeanors, 12th Edn. Vol., p. 105; 1 Hala's Pleas of the Crown 34). A person made non compos mentis by illness is excused in criminal cases from such acts as are - committed while under the influence of his disorder, (1 Hale PC 30). A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes, having intervals of reason,

(Russell, 12 Edn. Vol. 1, p. 103; Hale PC 31). Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.”

45. In the present case, the Institute of Human Behaviour and Allied Sciences has stated that patient (victim) D/o Shri Sat Pal was examined in the hospital and found to be *suffering from Mental Retardation which is probably present since birth and is untreatable*. To satisfy its conscience, the trial Court had put some questions to the victim to verify whether the victim was competent to give rational answers or not, and after finding that the victim was competent to understand the nature of questions put to her and the rational answers given thereto, the trial Court went on to record the evidence of the victim. Relevant portion of the evidence of the victim is reproduced hereunder:

“Q. Why did you come in the court today?

A. I came to Court alongwith my mother to depose against Uncle and witness pointed towards the accused.

In the above reply to the witness the court is satisfied as the witness is competent to make her statement in the court therefore her statement is recorded.

Accused/ Uncle present in court today had committed Galat Kaam with me. He has committed Galat Kaam for long back.

xxxxxxxxxxxxx by Sh.N.K. Tyagi, advocate for accused Maruti.

My father did not tell me to tell the court about the Galat Kaam I have deposed myself about this today in the court. My mother did not tell me to say about Galat Kaam VII. Said Papa. My marriage was solemnized but I deserted by my husband, as my husband had got another marriage. ‘Mere Pati Ne Dusri Shadi Kar Lee’. Police interrogated me.”

46. Reading of the evidence of the victim would show that she was not prevented by her illness from understanding the questions put to her, as she has stated that the appellant had committed “*Galat Kaam*”. The assertion made by the victim is categorical that the appellant did wrongful act with her. She has withstood the cross-examination and in fact has rightly narrated that her mother or father did not coach her to depose in court. She correctly narrated that she was married but was deserted by her husband who had re-married. Reading of her evidence would show that she was not prevented by her illness from stating that, the appellant had committed ‘Galat Kaam’. In the case of ***Tulshidas Kanolkar Vs. State of Goa*** reported at **(2003) 8 SCC 590**, involving ravishment of a mentally challenged girl, the Apex Court took into consideration the fact that the victim had in her testimony clearly mentioned the appellant as the culprit and had withstood the cross-examination, though she was mentally challenged. It was observed that:

“The case in hand is a classic example when the baser instincts of the appellant overtook his moral values and human sensitivity and he ravished the unsuspecting victim incapable of comprehending the vicissitudes of the dastardly act, not once, but several times. So innocent was the victim that she was not even aware of the dreadful consequences. The mental faculties of the victim were undeveloped and her Intelligence Quotient (in short “IQ”) was not even 1/3rd of what a normal person has. Tragedy struck on the victim sometime in 1999, when the parents of the victim noticed that her legs were swollen and there were signs of advanced stage of pregnancy. They were shocked beyond limits. They asked the victim as to who was responsible for her pregnancy. She in her own way pointed out accusing fingers at the

appellant and said that on some pretext or the other, he ravished her.

6. Non-examination of some persons per se does not corrode the vitality of the prosecution version, particularly when the prosecutrix has, notwithstanding her mental deficiencies, withstood incisive cross-examination and pointed to the appellant as the perpetrator of the crime."

47. The evidence of the victim is reliable and is also corroborated by the evidence of her mother. The complainant (mother of the victim) who is the eye witness to the occurrence, has in clear terms narrated in her evidence as to what she saw when she entered the *Jhuggi* of the appellant in search of her daughter. The mother of the victim has unerringly identified the appellant and stated that while searching for her daughter, when she pushed open the curtain of the *jhuggi* of Maruti, appellant, she saw her daughter (victim) was lying on a *palang* in the said *jhuggi* and her legs were down from the *palang* and her *salwar* had also been put off upto knees. Maruti (appellant) was not having *baniyan* and *kacha* on his person and he was over her daughter. After seeing her, he immediately separated from her daughter and put a towel around him. She then called three-five persons from the neighbourhood and told them that appellant, Maruti was lying naked on her daughter. Thereafter, she went to the police station to lodge a report. The complainant has been consistent in her testimony given at the time of lodging the FIR and before the Court. This witness has also withstood the cross-examination and pointed to the appellant as the person responsible for raping her daughter. It is trite law that merely because the evidence has

been given by a close relative of the victim, it does not automatically imply that their version is to be discarded. Evidence of partisan and interested witnesses can be the sole basis of conviction, however, a duty is cast upon the Court to carefully scrutinize the evidence and satisfy itself that such evidence is reliable and trustworthy. This Court in Crl.A.No.470/2003, **Harish Vs. The State**, has set out the law laid down by the Apex Court while dealing with the evidence of an interested witness.

*“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalti Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity

between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported **at AIR 2003 (90) Supreme Court 3613.**

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab* (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:-

*"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – *Rajasthan*', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still*

persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

9. Again in *Masalte and others v. The State of U.P.* (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. To the same effect is the decision in *State of Punjab v. Jagbir Singh*, (AIR 1973 SC 2407) and *Lehna v. State of Haryana*, (2002 (3) SCC 76). As observed by this Court in *State of Rajasthan V. Smt. Kalki and another*, (AIR 1981 SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in *Krishna Mochi and others v. State of Bihar etc.* (JT 2002 (4) SC 186)."

43. This view has again been reiterated recently in the case of **State of NCT of Delhi Vs. Rani Kant Sharma & Ors.**, reported at 2007 (3) JT 501, relevant portion is reproduced below:

11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non-examination would not affect the prosecution version. But at the same time if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyse the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defence witnesses.

44. Again in the case of **Manoj Vs. State of Tamil Nadu**, reported at 2007(5) JT 145.

9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

10. In **Dalip Singh and Ors. v. The State of Punjab** it has been laid down as under:-

“A witness is normally to be a considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and

falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

*11. The above decision has since been followed in **Guli Chand and Ors. v.State of Rajasthan** in which **Vadivelu Thevar v. State of Madras** was also relied upon."*

48. Applying the principles laid down by the Apex Court and upon careful scrutiny of the evidence of the mother of the victim, I find her evidence to be trustworthy and reliable. I also find no force in the submission of counsel for the appellant that at best the evidence of the mother of the victim only suggests an attempt to rape. In the case of **Koppule Venkatarao (Supra)**, relied upon by counsel for the appellant the Apex Court has noticed that the trial court convicted the accused holding that the victim was subjected to rape by the accused, which conclusions were upheld by the High Court. Both the Courts had held that since ejaculation was there, it amounted to rape and whether actual intercourse was there is immaterial, ejaculation being the ultimate act of sexual intercourse. While there is no quarrel with the proposition that the *sine qua non*

of the offence of rape is penetration but the aforesaid judgment is not applicable to the facts of the present case, as the statement made by the prosecutrix as well as the mother of the victim who had seen the appellant lying naked on the top of the prosecutrix and had described his act as a “Galat Kaam”. The statement of the mother of the victim is fully corroborated by the scientific evidence, according to which human semen was detected on the microslides of the vaginal swab as well as the salwar of the victim and underwear of the appellant. Thus it cannot be said that there was no penetration in this case.

49. Although the victim and her mother have clearly stated that the appellant was responsible for the disparaging act of raping the victim and a bare reading of the evidence of the defence witnesses clearly establishes that the appellant was present in his *Jhuggi* at the time of the incident, so much so that DW-1 has stated that she heard Bedo say that the appellant had committed *Galat Kaam*, it has been contended before me that the prosecution did not examine all the persons at the spot of the incident. This argument is without force, inasmuch as, if the defence could examine five persons, it was open for them to have got examined others present at the spot of the incident as well. Further I have also considered the medical and scientific evidence placed on record. Though the MLC of the victim shows that there was no fresh injury on her body or even on her vulva or breast and the hymen which was ruptured had old tears, the same does not imply that no rape

was committed. In fact, the scientific evidence in this case convincingly points against the appellant. It is of significance in this case, that the underwear of the appellant, salwar of the victim, and two micro slides of vaginal swabs of the victim were sent for chemical examination to the Forensic Science Laboratory (FSL). The analysis of the FSL is reproduced hereunder:

“DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel ‘1’	:	One cloth parcel sealed with the seal of “CMO SDN HOSPITAL AT SHAHDARA” containing Exhibits ‘1a’ and ‘1b’.
Exhibits ‘1a’ and ‘1b’	:	Two microslides having faint whitish smear.
Parcel ‘2’	:	One cloth parcel sealed with the seal of “CMO SDN HOSPITAL SHAHDARA” containing Exhibit ‘2’.
Exhibit ‘2’	:	One salwar having dirty stains.
Parcel ‘3’	:	One cloth parcel sealed with the seal of “CMO SDN HOSPITAL SHAHDARA” containing Exhibit ‘3’.
Parcel ‘3’	:	One underwear having dirty stains.

RESULTS OF ANALYSIS

1. Blood was detected on exhibit ‘3’
2. Human semen was detected on exhibits ‘1a’, ‘1b’, ‘2’ and ‘3’.
3. Blood could not be detected on exhibit ‘2’.
4. Report of serological analysis in original is attached herewith.

Note: Remnants of the exhibits have been sealed with the seal of AKS FSL DELHI.

Sd/-”

50. It has been contended before me that there was delay in sending the samples to FSL and that the same goes to discredit the case of the prosecution. While there was delay in sending the seized articles to the laboratory, which should have been sent to the Laboratory at the earliest, however, in my considered opinion, the delay is not fatal to the facts of this case. As per PW-5, Dr. Kalpana, the vaginal swabs of the

victim were taken, slides made were sealed with the seal of the hospital and handed over to the lady police Constable. The salwar was also sealed and the sealed parcels were taken vide Memo Exhibit PW-6/E and P. As per the evidence of PW-10, Dr. A.K. Saini, the undergarments of the appellant were sealed with the seal of the hospital and handed over to Constable Khem Chand. PW-6, SI Puran Chand, has deposed that lady Constable Arti and Constable Khem Chand came to the police station along with MLC of the victim as well as the appellant. He further deposed that Ct. Khen Chand also produced a sealed parcel duly sealed with the seal of the hospital and that Ct. Arti also produced before him a sealed pulanda duly sealed with the seal of the hospital. No question was put to this witness (PW-6) during cross-examination with regard to when the sealed parcels were sent to the laboratory. Evidence of PW-8, Constable Khem Chand and PW-9, Constable Arti Gupta have also been corroborated by the evidence of PW-6, SI Puran Chand who deposed that one pullanda along with sample seal of the hospital were handed over. Furthermore, PW-11, SI Suraj Pal, has deposed that he had prepared the final report under Section 173 of the Cr.P.C., however, at that time the exhibits of the case were not sent to the CFSL as the required letter from the DCP's office had not been received. His further examination was adjourned as the CFSL results had not been placed on the file. This witness was examined subsequently and he deposed that the exhibits of the case were sent to the FSL and reports were later received,

which are Exhibit P-X and P-Y. This witness was not cross-examined by the counsel for the appellant. Reading of evidence of the Doctors (PW-5 and PW-10) would show that the vaginal swab and the undergarments were duly sealed by them with the seal of the hospital and handed over to the police Constable. Ct. Khem Chand and Ct. Arti Gupta have deposed that they received the sealed pulandas which were handed over by them to the I.O. SI Puran Chand has deposed that he has received the sealed pulandas. I find that the learned counsel for the appellant has not cross-examined any of these witnesses on the aspect of tampering of the seized articles. No doubt once the articles were sealed the same should have been sent to the FSL as expeditiously as possible. It has been established on record that the articles were duly sealed by the Doctor and handed over to the Constables who in turn handed them over to the I.O. Mere delay cannot lead to the conclusion of tampering. But considering the evidence on record there is nothing to suggest that the seized articles were tampered with. The FSL report beyond doubt establishes the dastardly act committed by the appellant. As per the FSL report, semen was found on the salwar of the victim as well as on the underwear of the appellant, so much so that semen found on both the exhibits (salwar and underwear) was of Group A. Even the microslides (vaginal swabs of the victim) were found to have contained semen.

51. In view of the statement made by the victim, who despite her ill-developed mental faculties has pointed out against the

appellant as the person who raped her; the evidence led by the mother of the victim, who was an eye witness to the incident, and caught the appellant red-handed; and the medical and scientific evidence which establishes the presence of semen on the salwar of the victim, vaginal swabs of the victim and the underwear of the appellant and thus convincingly corroborate the case of the prosecution. The Court cannot lose track of the fact that in the Indian social system no woman much less a mother would implicate her daughter at the cost of sacrificing the future prospects of her daughter by making a false allegation of rape. The Supreme Court has observed as under in the case of **Vishnu V. State of Maharashtra**, reported at (2006) 1 SCC 283 and given an indication of the conditions prevailing in our society, which we need to keep in the back of our mind when examining the correctness or otherwise of the testimony of a prosecutrix in a rape case. This is what the Supreme Court has said:

“In the traditional non-permissive bounds of society of India, no girl or woman of self-respect and dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardizing future prospects of getting married with a suitable match. Not only would she be sacrificing her future prospect of getting married and having family life, but also would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family circle.”

52. Accordingly, I find no infirmity in the judgment dated 19.09.2000 and order on sentence dated 23.09.2000, passed by the learned ASJ, Delhi, in case FIR No. 134/99, PS Kalyan Puri, under section 376, IPC.

53. Sh. Aman Ahluwalia, who was appointed as an *amicus curiae* has laboured hard and has rendered effective assistance to the court. The hard work and effort put in are highly appreciated. His fee is fixed at Rs.11,000/-.

54. The present appeal is dismissed. In case the appellant is on bail, he is directed to surrender forthwith and he be taken into custody to undergo the remaining term of his sentence.

(G.S. SISTANI)
JUDGE

July 01 , 2009
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