

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

Reserved on : 10.04.2012

Decided on : 13.07.2012

+ **CRL.A.179/2012 & CRL.M.A. 7959/2011**

STATE Appellant

Through: Mr. Sanjay Lao, APP

JAI HIND Respondent

Through: Mr. Kedar Yadav, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S.RAVINDRA BHAT

%

1. This is an appeal against the acquittal of the respondent on a charge of rape of a minor child "Baby X" aged about ten years on the date of the incident.

2. The alleged facts which can be gleaned from the Complaint (Ex. PW-2/A/ 12/A) are that on 27.08.2008, when the prosecutrix was alone at her elder sister's house, at about 1:00 PM in the afternoon, the present respondent Jai Hind (hereafter "the accused"), who lived in a room in the same premises, entered her room and bolted the door. He removed her underclothes. When she protested, he threatened to kill her, her sister and her brother-in-law. He then raped her (there was penal vaginal penetration).

When she started weeping from the pain, he ran away. At about 8.00 PM, that evening, Rakhi, PW-1 the prosecutrix's cousin, (who lived downstairs), returned from work. Baby X told her that her abdomen was hurting. The next day, i.e., on 28.08.2008, she was again alone at home, and at about 2.00 PM, the accused, again went inside the room, bolted it from inside and raped her. While leaving, he threatened to kill her if she told anyone about this. That evening, again, PW-1 Rakhi, came to her house at around 8.00 PM, and 'X' again told her about the pain in the abdomen. At 10:00 PM, her older sister Rekha PW-3 came back, and 'X' told her too about the abdominal pain. Later in the night, she narrated the incident to her sister. She was taken to the Police Post by PW-1 and PW-3 and the complaint was lodged.

3. The prosecutrix X was then taken to AIIMS where she was medically examined and an MLC (Ex. PW-4/A) was recorded where she named the accused. The accused was arrested and examined at AIIMS through MLC Ex. PW-6/A. Material evidence such as the underclothes of the victim, blood in a gauze, pubic swab and slide were collected and sent for analysis to the CFSL. The accused pointed out the place of incident (Ex. PW-1/B). The statement of the victim was recorded under Section 164 CrPC on 02.09.2008 (Ex. PW-5/C). The accused was charged under Sections 376/ 506 IPC on 04.02.2009. He pleaded not guilty and claimed trial.

4. The Court examined 13 witnesses including the victim and the examining doctors; it also recorded the statement of the accused under Section 313 CrPC and examined the physical evidence brought on record. The Trial Court, in the impugned judgment, however, found the evidence on record lacking with respect to proving the guilt of the accused beyond

reasonable doubt and acquitted him. Consequently, the State has appealed by leave.

5. The Trial Court was of the opinion that to base a conviction on the sole testimony of the prosecutrix, was unsafe, given the circumstances of the case. It held that the prosecutrix had visited a doctor on the first occasion, and yet not disclosed the sexual assault; similarly, she did not mention about this to one of the witnesses who was always at home. The reporting of the incident, pursuant to the alleged disclosure of the crime to the prosecutrix's sister, late on the second night, casts grave doubts about the story. It was held that in the absence of corroboration, through other evidence, it would be unsafe to conclude that the accused's guilt had been established beyond reasonable doubt.

6. The learned APP relied on the testimony of PW-4, the examining doctor; she had deposed that on local examination, the child's hymen was found to have been ruptured. It was submitted that the accused, in cross examination of this witness, could not elicit anything worthwhile to contradict the prosecution version about a rape. In fact, PW-4 denied the suggestion that no rape was committed on 27/28.08.2008, and she further denied a suggestion that she had not conducted any medical examination on the prosecutrix. Similarly, argued the APP, the doctor who examined the accused, showed that there was nothing to suggest that he was incapable of performing sexual intercourse. His blood, penile swab and underwear were collected, sealed and given to the Police. Although in cross examination, the witness admitted that it was possible that when an adult man raped a ten year old girl, he would sustain injuries, however, nothing turned on that issue.

7. The APP highlighted the fact that in law, there is no requirement for corroboration of a prosecutrix's testimony in a rape case. It was submitted that the testimony of a child victim of rape stands on the same footing, and no distinction can be made on the basis of the fact that the prosecutrix is a child. The law does not impose a higher standard, upon the prosecution to prove by other corroborative material or evidence, the veracity of the victim's evidence. Counsel placed reliance on the ruling reported as *Nivrutti Pandurang Kokate & Ors vs State Of Maharashtra* 2008 (12) SCC 565, where it was held as follows:

“8. The age of the witness during examination was taken to be about 12 years. The Indian Evidence Act, 1872 (in short "the Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, 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. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in Wheeler v. United States (159 US 523). The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. [See Suryanarayana v. State of Karnataka (2001 (9) SCC 129)].”

8. It was submitted that the reasons which persuaded the Trial Court to acquit the accused were trivial, and based wholly on irrelevant and minor contradictions, which did not in any way undermine the veracity of the

statement of the witness, particularly the testimony of the child witness who was also a victim of the heinous offence. It was submitted that the identity of the offender, the place and the time when the offence was committed had been clearly proved, by the witnesses, including the victim and the other two witnesses, PW-1 and PW-3. The contradiction between the three of them about the visit to a doctor earlier, and the prosecution's omission to examine the previous doctor, could not undermine the testimony of these material witnesses.

9. Learned counsel for the accused, on the other hand, submitted that the Trial Court's appreciation of evidence and the conclusions recorded by it in the impugned judgment, did not call for a fresh look, as there was no substantial or compelling reasons to exercise appellate interference. It was submitted that the contradictions between the three witnesses, i.e., PW-1, the victim, PW-2 and PW-3 are serious and material. In this regard, it was urged that PW-1 admitted that the child had confided about pain in the abdomen, on two days, and that on both occasions, the child had been taken to a local doctor. On the other hand, according to PW-3, on 27.08.2008, after she returned from work in the evening, at around 8.00 PM, the child- PW-2- told that she was feeling pain in her abdomen. She says that she took her to a doctor close-by. This again, submitted counsel, contradicted PW-2's statement that she had been taken by PW-3 to Safdarjung Hospital.

10. Counsel for the accused submitted that the evidence on record had established that it was not only him but several others who resided in the premises; in fact there were as many as 16 tenanted rooms. The accused had suggested that other two individuals, who lived in separate rooms, within the same premises, were responsible for the crime.

11. It was argued that an overall reading of the evidence of PW-2 would suggest that she was not reliable. In this respect, it was highlighted that the victim did not mention being shown to the doctor, as deposed by PW-1, prior to the reporting of the incident. It was only in cross examination, for the first time, she admitted being shown to the doctor by PW-1 on 27-8-2008. Even in her statement recorded by the Magistrate under Section 164, Cr. PC, the prosecutrix did not say anything about being taken to any doctor earlier. On the other hand PW-1 deposed that she took the child twice, on two successive days. It was inconceivable that the child would not remember such an important aspect. In these circumstances, the prosecution should have examined that doctor. Its failure casts grave suspicion about the credibility of the prosecution story. It was also argued that the child witness was tutored, as was evident from the manner she answered the questions put to her; the Trial Court had observed about the deliberation and thought she put in while under questioning during the proceedings. Furthermore, the Trial Court observed at least on one occasion when she did not state the truth, about the presence of two other young men, in the same premises. Having regard to all these, it would be unsafe for the court to rely on her testimony.

Analysis and Findings

12. According to ASI Nizamuddin, PW-11, on 29-8-2008, the child victim, PW-2, accompanied by PW-1 and PW-3, went to the police station, PS Okhla, at around 7 AM, alleging that she had been raped. It was alleged that the accused had committed the rape. He, with PW-1 and the victim accompanied by PW-8 went to the hospital, AIIMS. The MLC (Ex PW-4/A) corroborates this to the extent that the child was produced for examination at

08:17 AM. After examination, the statement of the victim was recorded (Ex. PW-2/A; it was despatched for being registered as a FIR at 11 AM (Ex. PW-12/A, the endorsement on the statement). The FIR (Ex PW-8/B) was recorded at 11:30 AM. In the statement as well as the FIR, the victim was consistent in her story about the rape having been committed on her, on the previous two days. She also stated that she did not reveal this to her cousin (also her guardian) due to the threats held out by the accused. The accused's identity was clearly mentioned. Her statement was recorded by the magistrate on 30-8-2008. This was again consistent with the statement made by her at the first available opportunity.

13. Baby 'X' the prosecutrix, was first shown the accused in Court. She identified him, stating that he used to reside near the rented room where her sister used to live. She stated that on the 27th day of the month at about 1 PM, she was alone in the room, and her sister's children were playing outside the house. The accused entered the room and bolted the door from inside. She narrates thus:

“ Phir Jai Hind Uncle ne meri kachchi utar di, phir usne peshab karne wala meri peshab karne wali jagah me dal diya aur phir who mere saath galat kaam karne laga. Galat kaam ka matlab usne apna peshab karne wala ander bahar karna shuru kiya. Main chillai toh usne mera muh daba diya. Jai Hind Uncle ne mujhe dhamkaya ke agar tu kisi se bolegi toh sabko jaan se maar daalunga ”

(The Court noted here that the child had turned pale despite being reassured that no mishap would befall her.)

She continued, stating that she felt pain when the accused raped her. She cried and the accused left the room. She did not mention this to anybody as

she feared the accused. She felt pain in her abdomen and was taken to Safdarjung Hospital by her relative Rakhi. The child victim then stated that on the next day, the 28th day of the month, the accused came to her room at 2 PM when she was again alone in the room and her sister's children were playing outside. He again bolted the door from the inside. She states that he again removed her under-wear and:

“Phir usne apna peshab karne waala meri peshab karne wali jagah me dal diya aur apna peshab karne wale ko meri peshab karne wali jagah me aage peechhe kiya”

She stated that the accused covered her mouth and committed rape on her. He threatened to kill her if she reported the matter to anyone. She started crying and the accused left. She again felt pain in her abdomen. She stated that she told her sister Rekha (PW-3) about this incident at night when she came from work. She was taken to the Police Post, where the police recorded her statement. She identified her signature on the complaint. From there she was taken to the hospital where she was medically examined and she told the doctor that she had been raped by the accused Jai Hind twice. She said that she was then taken to Court where she narrated everything that had taken place to the magistrate under Section 164 CrPC (Ex PW-2/B); Following this, her underwear was seized (Ex. PW-3/A).

14. In her cross-examination, the victim denied that the police had coached her, and asserted that she remembered everything about the incident. She stated that there were 16 rooms on the floor where her sister was staying on, and fewer rooms where Rakhi was staying. She said that on the 27th all the occupants of the first floor had gone to work; the accused too had gone to work and come back during lunch. She said she did not know

whether he had come directly to her room or gone to his room first and then came to her room, as she had been inside all the while. The counsel for the accused asked her about two other boys who were staying in the same premises, named Jamil and Zilani. She was questioned on her interaction with them: she stated that she had visited them once with her cousin Rakhi, and that even though they had a television in their room, she did not go there, as they watched television in the room of Rakhi's friend Neelam. (The Trial Court had observed here that the child was taking a lot of time to answer the questions put by the Learned Defence Counsel and that each question had to be repeated several times)

15. The prosecutrix denied a suggestion to her that the boys living on the same floor as her sister's family used to touch her and kiss her. She had previously denied that Jamil and Zilani lived in her neighbourhood and then subsequently mentioned that they did. When she was questioned on this she stayed quiet despite being asked the question several times and the Court had to wait for twenty minutes. She however denied that she was falsely implicating the accused in order to save either Jamil or Zilani. She in fact volunteered to the Court that "*Yeh hi hai dusra koi nahi hai.*" She denied that she had seen either Jamil or Zilani on the 27th. She stated that on that day, she did not tell anyone about the incident since she was scared. But she did tell Rakhi about it the next day. She said that on the first day, she was taken to the doctor by Rakhi (PW-1). She stated that Rakhi was the first person she told about the incident of rape. She also stated that when she was taken to the police station by her sister Rekha, Jai Hind accompanied them. She said that from there, she was taken to the hospital along with Rakhi, by a police man. She states that Rakhi first told the doctor about the incident and

then she herself told the doctor. When the suggestion was again put to her that it was Jamil or Zilani who had raped her, she denied it, and again voluntarily stated that “*Jai Hind ne hi kiya*” She denied that she was falsely implicating Jai Hind in order to protect Jamil or Zilani.

16. PW-1, Rakhi, deposed that in August, 2008, she was working as a security guard in Escorts hospital and residing in a house in Harkesh Nagar. Her maternal aunt Rekha (PW-3) also lived in the same premises on the first floor while she stayed on the ground floor. She stated that Rekha was also working in the month of August and she had brought Baby X, her cousin, from her village to look after her own children. On 27.08.2008, when she returned from work at about 8 P.M, the child met her and told her that she was “feeling pain in her stomach.” She took her to a doctor in the neighbourhood. The next day, i.e., on 28.08.2008, when she came back, the child again told her that she was feeling bitter pain, so she took her to the doctor and brought her back home. PW-3 Rekha (who also worked as a security guard) came back from work and asked Baby X to tell her what had happened, and then the prosecutrix told her that Jai Hind had committed rape upon her in the noon on the 27th and the 28th and that he threatened to kill her if she told anybody. PW-3 told her (PW-1) about this incident. Then this witness, Rekha PW-3, Sanjeev (the husband of PW-3) and the child victim went to the police station. She (PW-1) then took the child to AIIMS so that she could be medically examined. Then they came back to the police chowki. Her statement was recorded, then they went back to their place of residence and the accused was arrested at her instance. (Ex. PW-1/A).

17. In cross examination the witness said that on 27.08.2008, she took the child to the Holy Family Hospital, where she told the doctor that she had a

stomach ache. She was admitted for about 1-1/2 hours. She stated that she had a prescription card for the same and could produce it before the Court. On the next day, when Baby X again complained of pain in her stomach, she took her to Safdarjung Hospital along with Rekha (PW-3, her maternal aunt) and her uncle. She was admitted at about 8 PM, medically examined and discharged at the same time. They received a prescription card from here as well. She also deposed that when they returned from the hospital, the child told her “mother” (presumably she means the sister, i.e., PW-3 Rekha) that she was raped by the accused Jai Hind and immediately after, her “mother”(sic) told her about this incident. She further stated that the next day, i.e., 29-082008, at about 7.00 AM they reached the Police Station, with the victim. Her statement was recorded and they took the child to AIIMS , and they were accompanied by one police person. She deposed that PW-3 gave the underwear of the child, which she had been wearing at the time of the incident, about three days later to the police, but it had been washed. She denied that the accused’s statement had been recorded in her presence, or that he was taken to the place of occurrence of the incident in her presence. She said that the child’s statement was recorded in her presence on 29.08.2008 and her second statement was recorded after her medical examination. She was told to bring the prescription slip of the Holy Family Hospital and Safdarjung Hospital where Baby X had been admitted, but she did not do so as she claimed that she could not trace them.

18. PW-18 is the older cousin sister of Baby X (daughter of her maternal uncle). She stated that she, her husband and PW-3 Rakhi used to work as security guards at various establishments and she had brought her sister Baby X to her house to look after her children. She deposed that on

27.08.2008, the child had been residing with her, and she, her husband and PW-3 had all gone to work. When she came back from work that evening at around 8 P.M, her sister complained that she was feeling pain in her abdomen. She says that she took her to a doctor close by. On 28.08.2008, when she came back home, her sister was weeping because she was again feeling pain in her abdomen. When she asked her what had happened to her, the child told her that she had been raped by Jai Hind on 27.08.2008 and 28.08.2008 in the noon at about 1 PM. This witness stated that her sister had told her that at the time of the incident there was no one in the room, and that he had threatened to kill her if she reported this incident to her brother-in-law or sister. She narrated this incident to her niece Rakhi. On the next day, i.e., 29.08.2008, she, Baby X and Rakhi went to the Police Post. A lady officer went to Jai Hind's room, but he was not there. The child was then taken to the hospital by her niece Rakhi and the Police. She did not accompany them as her own child was ill. The witness deposed that the accused was arrested at Harkesh Nagar. She handed over the undergarment which had been worn by the child at the time the offence had been committed on her; it was seized by the police (memo Ex. PW-3/A).

19. Counsel for the accused put the same suggestion to this witness that he had, to the child i.e., of the possibility of the involvement of Jamil or Zilani in the offence. She denied any knowledge of these boys as being tenants in the same premises. She said that she had brought Baby X to her house six to seven months back and that she was not familiar with the tenants of the building. She reiterated that her sister told her about being raped at about 8.00 PM when she had returned from work and that her husband had not returned home at that time. She stated that the distance

between the police post and her house could be covered by foot in half an hour. She did not have a mobile phone though her husband had one, and he was away at night duty. When he came back in the morning, she told him about the incident. She states that she did not inform the police or her husband about the incident since she did not have a cell phone. A suggestion was put to her that she had borrowed ₹ 20,000 from Jai Hind for getting her children admitted in school, which she denied. She volunteered that she went to the police post and the lady police officer visited the spot and Jai Hind was arrested from a Gali near their rented premises. He was arrested in the morning.

Testimony of expert witnesses

20. PW-4, Dr. Prachee Agarwal stated that on local examination, the child's hymen was found ruptured. A vaginal smear was taken and handed over to the police. The under garment was not seized as it had been changed after the last act. She prepared the MLC in her own handwriting. It bears her signature and the thumb impression of Baby 'X'. (Ex. PW-4/A). In cross examination she was asked whether she could tell the time of rape, if it had indeed been committed on the victim. She replied stating that when there are signs of fresh injury, the time may be determined, and the vaginal smear can also indicate the time of rape. She denied the suggestion that no rape was committed on 27/28.08.2008, and also denied the suggestion that she had not conducted any medical examination on the prosecutrix.

21. PW-6, Dr. Sushil Sharma, department of Forensic Medicine and Toxicology, AIIMS deposed that he had examined the accused and that there was nothing to suggest that the accused was incapable of performing sexual intercourse. His blood, penile swab and underwear were collected and sealed

and given to the Police. In cross examination, he was asked whether it was possible that when an adult man raped a ten year old girl, he would sustain injuries, this witness replied saying that it was possible but the accused did not have any such injuries.

22. PW-5 Ajay Goel, Senior Civil Judge, recorded the prosecutrix's statement under Section 164 CrPC. He stated that he asked her a few questions to ascertain whether she was capable of making a rational statement and to ensure that she was under no stress or strain. He identified the original copy of the statement under Section 164 in Court. (Ex. PW-5/C).

23. Constable Ranbeer Singh deposed that he was posted at PS Okhla on 29.08.2008; he joined this investigation with ASI Shanti, the prosecutrix PW-2, Rakhi PW-1 and Rekha PW-3 when they went to the premises where the prosecutrix and the accused stayed. There, at the instance of the prosecutrix, the accused was arrested. She pointed towards him and told them that he had committed rape on her. The accused's arrest memo is Ex PW-1/A. His personal search memo was prepared, after his search; it was proved as Ex. PW-7/A. The accused then led them to the first floor of the house and pointed out the spot where he had raped the victim. The accused was taken to AIIMS Hospital by Constable Sri Ram for medical examination. The witness clarified that they reached the spot at 12 PM and stayed there till 1.30 PM.

24. PW-8 Constable Ashok accompanied the prosecutrix to AIIMS Hospital, along with PW-1 Rakhi. He took the sealed pulanda that was given by the doctor post examination to the Police Post Okhla and handed it over to ASI Shanti (Ex.PW-8/A). The IO gave him a *rukka* which formed the basis of the FIR which was registered in Police Station, Okhla (Ex. 8/B). In

cross examination he stated that Baby X's statement was recorded when she came with her relative to the Police Station. This witness's deposition was entirely corroborated by PW-11 Nizamuddin.

25. PW-9 Laliteshwar Prasad, Assistant Principal in the Government Senior Secondary School in Rampur, Vaishali, Bihar, showed the school admission and withdrawal records (Ex. PW-9/A & B,) of the prosecutrix. He stated as per records that she was admitted on 14.12.2006 to the Second Standard and left school on 20.11.2008. He had also brought the declaration form wherein the birth date of the child had been given (Ex. PW-9/C). PW-1 Assistant Sub Inspector Shanti deposed that she was posted in PS Sangam Vihar, on 29.08.2008, when she was directed to go to Police Post Okhla. There, PW-8 Constable Ashok and PW-11 SI Nizamuddin met her. They produced the victim PW-2 and her relatives Rakhi PW-1 and Rekha PW-3. The police men gave her one MLC and one sealed pulanda. She recorded the victim's statement Ex. PW 2-A. Thereafter, the prosecutrix, Rakhi, Rekha and Constable Balbir went to the spot and the prosecutrix pointed out to a boy standing in the premises. He was identified by PW-1 Rakhi and the Prosecutrix PW-2, arrested and searched, and then he pointed out to the place of the incident. He was then sent for medical examination to AIIMS. Then she recorded the statements of PW-1 Rakhi and the victim PW-2. PW-3 produced the underwear of the victim at the spot (Seizure Memo Ex. PW-3/A). Then PW-3's statement was also recorded.

26. In cross examination by the counsel for the accused, the witness stated that on 02.09.2008 after getting the statement of the prosecutrix recorded under Section 164 CrPC, she handed over the investigation of the case to Incharge Police Post Okhla since she had come from PS Sangam Vihar. She

also deposed that she had not recorded the statement of the landlord who lived in the same premises, or of any of the neighbours.

27. The accused, in his statement under Section 313 Cr. PC, denied all the evidence put to him. He stated that he wanted to lead defence evidence but subsequently did not do so.

28. A careful reading of the oral testimonies of various witnesses reveals that the prosecutrix stated that the accused had raped her on 27-8-2008 in the afternoon, after 1 PM; he locked the room as she was alone. He repeated this again, the next afternoon. She did not mention this to anyone since the accused had threatened to kill PW-3 and her husband. PW-1 stated that on 27.08.2008, she took the child to a nearby doctor, because she complained of stomachache. She took her again to a doctor on 28-8-2008. PW-3 Rekha stated, on the other hand, that she took the child to a doctor, on 27-8-2008. On the other hand, the child stated – in cross examination- that it was Rakhi (PW-1) who took her to the hospital. Another inconsistency here is that the child PW-2 mentioned that she was taken to Safdarjung Hospital on 27.8.2008, whereas PW-1 Rakhi in her cross examination stated that she was taken to the Holy Family Hospital on the 27.8.2008 and to Safdarjung on 28.08.2008.

29. There is also inconsistency between the statements of PW-1, 2 and 3 with respect to the incident of 28.08.2008. While the child (PW-2) made no mention of being taken to the hospital by Rakhi on 28-8-2008, Rakhi PW-1 states that she, PW-3 Rekha and her ‘mama’ took the child to Safdarjung Hospital and that her maternal uncle collected the prescription form from the doctor. PW-3, on the other hand did not mention going to Safdarjung Hospital with her husband, PW-1 Rakhi and PW-2 Baby X. Further PW-3

stated that her husband was away on night duty and only returned the next morning, when he was told about the incident, following which they reported the matter to the police. This is again inconsistent with Rakhi's statement as she claims that the maternal uncle was with them that night when they went to the doctor. Another aspect is that the prosecutrix stated that the accused Jai Hind accompanied them to the Police Station when they went to lodge the complaint.

30. These inconsistencies apart, the testimony of the prosecutrix, with relation to the incident of rape is reassuring as she has been consistent throughout in describing what the accused did to her. Her description of the act of rape is accurate and narrated with the understanding of a ten year old child. It is not spoken of with the sophistication of an adult, and from this one can be reassured that the child has not been coached. Furthermore, despite the cross examiner having put several suggestive questions to her about being raped by Jamil and Zilani, she vehemently denied these suggestions and in fact volunteered more than once that "Jai Hind ne hi kiya".

31. The law with regard to the testimony of child witnesses can be summed up thus. The conviction on the sole evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same. (*Ratansinh Dalsukhbai Nayak v. State of Gujarat* 2004 (1) SCC 64) It should be accepted albeit with circumspection. This decision had accepted the observations *Dattu Ramrao Sakhare v. State of Maharashtra* [(1997) 5 SCC 341] where it was held that:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored."

In *Pancchi v State of U.P* AIR 1998 SC 2726 it was held:

"It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence if a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and this a child witness is easy prey to tutoring."

In earlier cases the Supreme Court urged caution while dealing with the testimony of a child witness. The position seemed to be that it is necessary to see whether the testimony of a child has been corroborated in essential particulars, unless the circumstances render it safe to accept the testimony without corroboration (*Porapati Muthiah* ILR 1965 AP 650; *Shaik Umar Saheb* 1957 AP 343; *Abbas v. Emperor* 1933 Lah 667; *Jalwanti v State* 1953 Pat 246; *Munna v State* 1985 Cr LJ 1925 (All.).) However, the later position is that there is no rigid rule that corroboration is essential. (*Munna v. State* (1985) Cr. L. J 1925 (All) *Jarina Khatun v. State of Assam* 1992 CrL. L.J 733 (735) Gau.)

32. A common sense approach was advocated by the Court in the early case of *Mohamed Sugul Esa v. The King* A.I.R 1946 P.C.3:

“Once there is admissible evidence a court can act upon it; corroboration, unless required by a statute, goes only to the weight and value of the evidence. It is a sound rule not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.”;

and later in *Rameshwar v. State of Rajasthan* AIR 1952 SC 54 where the Court held :

“ The rule, which according to cases has hardened into one of law, is not that corroboration is essential before there can be a conviction, but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.”

33. It would be seen that the Court has over the years attributed to the testimony of child witnesses the same kind of credibility that it attached to the statement of any other witness if the testimony is consistent. In the present case the prosecutrix has been consistent on the material particulars with regard to the two instances when she was raped. That her hymen was ruptured has been corroborated by her medical examination and by the doctor who conducted her examination. Her relatives substantially corroborated the incidents that occurred subsequent to her rape. All of this evidence was put to the accused. He had the opportunity to lead evidence but he did not.

34. The Trial Court has dismissed the child witness's testimony on the basis of the inconsistencies in her statement such as her statement that the accused accompanied them to the Police Station, the fact that she had been inconsistent about whether or not she knew her neighbours Jamil and Zilani; the fact that other neighbours had not been made witnesses to the case. The Trial Court's treatment of Baby X's statement can be seen in several instances. She was asked questions of the most objectionable content, such as whether Jamil and Zilani used to touch her and kiss her, whether she was implicating the accused to protect Jamil and Zilani. The questions put to her were also of the sort that could easily intimidate a child witness. For instance:

“ Why did you speak lie regarding Jamil and Zilani earlier, that is first of all you stated that they were not living in your neighbourhood and later you have stated that they were living near your room?”

In the judgment delivered by it, the Trial Court has observed:

“When suggestion was given to PW-2 baby X that whatever was done on her it was by Zamil and Jilani, she had denied the same and volunteered that ‘JAI HIND NE HI KIYA’. It is not clear why PW2 Baby X is particular about pin pointing the accused, why she kept mum, why she did not answer for twenty minutes when specific question was put to her, why she told lie about Zamil and Zilani, it all raises doubt in the statement of Baby X”

35. This conclusion reached by the Trial Court seems a very strange one. Firstly, it treats the child's certainty in naming the accused, with suspicion and as a reason to disregard her testimony; secondly, it disregards that this fairly complex and insensitive question has been put to a child of ten years, and that it is possible that she is mortified or scared or simply not

comprehending the question that has been put to her. The Trial Court has further used the fact of the absence of injuries on the victim, the absence of vaginal bleeding; and the absence of injury on the accused as being exculpatory of the accused. This Court strongly deprecates the approach adopted by the learned Judge, who recorded the testimony of the child victim, in a most insensitive and offensive manner.

36. In the final analysis, the Court has to weigh the testimony of the child witness against the inconsistencies in her statement, the absence of vaginal injury other than the torn hymen, and the inconsistencies in the narratives of the victim's relatives in order to determine whether the accused is guilty or not.

37. There are, as noticed above, certain contradictions in the versions of PW-1, PW-2 and PW-3 about whether the victim was in fact shown to a doctor, prior to the reporting of the rape incident to the police. Facially, these contradictions seem serious enough; PW-1 claims to have taken the young girl on both days, in the evening to a doctor, and that she received treatment. PW-2 herself did not corroborate this, in her first statement to the police, nor in her statement to the magistrate, under Section 164 Cr. PC. In her cross examination, however, she said that she was taken to the doctor after the first sexual assault, on 27th August, 2008. PW-3 also claimed to have taken the girl to a doctor on 27th August. However, no prescription, or documentary evidence in support of such testimonies was brought on the record. These, however, have to be seen in the light of the testimony of the child witness. She was consistent in all her versions, regarding the essentials of the sexual assault, how the accused used to live in the same premises, that

he went to her room during afternoons on successive days, and committed rape. She also clarified that the accused had threatened to harm her sister (PW-3) and her husband if she, the victim, complained of his behavior. This, in the Court's opinion, provides the most powerful explanation why she did not reveal the sexual attack, till the pain – and trauma – became unbearable. She then confided in PW-3, who then told PW-1. She resisted repeated suggestions that she had falsely implicated the accused, and that two other boys were responsible. This court is of the opinion that much cannot be made of the fact that the child did not initially answer truthfully if the other two boys lived in the vicinity; however, she was extremely categorical – on two occasions – during cross examination, in asserting that the accused, and none else had committed rape on her.

38. In *State of Punjab Vs. Gurmit Singh & Ors.* AIR 1996 SC 1393, the Supreme Court held that in cases involving sexual offences, harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. It was held that:

“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.”

39. In this case, the testimony of the child prosecutrix, who was about 9 years of age, is consistent; she could not be shaken during the cross examination, despite the not so conducive atmosphere- almost bordering the hostile – in the court, during the recording of her testimony. PW-4, the doctor who examined her, clearly deposed about hymen rupture, and said that the injuries on the vital parts of the child were fresh. She denied the suggestion that the child was not raped. The child's not informing her relatives till late night of 28-8-2008 cannot be isolated from the fact that the accused threatened dire consequences to them, in case she revealed the incident. She was constrained to share her agony, when the pain and trauma became unbearable. All these are natural, and this Court fails to see why such obvious facts were overlooked and the Trial Court got swayed by the varied and inconsistent statements of PW-1 and PW-3 about taking the child to another doctor. It is possible that they did, maybe once, or even twice, but could not anyway corroborate it with documentary evidence. That omission, or contradiction cannot be so fundamental as to undermine the credibility of the child's evidence, which was recorded in fairly hostile circumstances. In this Court's opinion, the impugned judgment fundamentally fell into error while appreciating the evidence, and gave much importance to trivial matters, which ought not to have been the case. The said judgment discloses substantial errors, which constitute sufficient ground for this court to interfere with its judgment, and reverse the acquittal. While doing this, the court recollects and applies the standard indicated by the Supreme Court in various judgments (Ref. *Sanwat Singh v State of Rajasthan* AIR 1961 SC

715; *Himmat Sukhadeo Wahurwagh v. State of Maharashtra* (2009) 6 S.C.C. 712, etc.).

40. The mandatory punishment for child rape is a minimum ten years imprisonment, as provided by Section 376 IPC:

“376. Punishment for rape.-

(1) Whoever, except in the cases provided for by sub- section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-

(a) being a police officer commits rape-

.....

.....

.....

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

..... ,
.....

41. In this case, the accused, a tenant of the same premises and living in another room, was aware about the fact that the victim was alone in her house; he took advantage of it, and repeatedly committed rape on two successive days. The victim was threatened; she could not therefore muster courage to reveal this assault to her guardian. When the pain and trauma became unbearable, she informed PW-3 about the two incidents. Having regard to these circumstances, this court is of the opinion that the impugned judgment of the Trial Court cannot be sustained; it is set aside. The accused is convicted for the offence punishable under Section 376 (2) (f) IPC, and sentenced to undergo rigorous imprisonment for 10 years. He shall, in addition, pay ₹ 15,000/- as fine, which shall be given over to the victim, as compensation, by the State. In default of the fine, he shall undergo 6 months simple imprisonment. The accused shall surrender before the Trial Court on 31.07.2012; the Registry is directed to transmit the records of this case, forthwith to the Trial court for that purpose

Court's approach towards Child victims and child witnesses

42. A few words here about the manner in which depositions of Court witnesses are to be recorded. Across jurisdictions, it has been the experience that characteristics of the courtroom interfere with a child's ability to give his or her evidence. Findings indicate that a change in the environment in which questioning takes place can affect the quality of evidence given by a child. It has been observed that children are more forthcoming and accurate when their interviews are conducted in settings that are less formal, more

familiar, and more private than a courtroom. This indicates that there is a need for modifying standard courtroom procedures to accommodate the special needs of child witnesses. Subjecting a child to the adversarial process has also been found to be problematic when the witness is a child. In such a system, children are forced to relive (on the questioner's terms) the trauma of having been the victim of, or a witness to a crime. Most children have difficulties coping with two elements of this system: confrontation and cross examination. (Ref the article *An Inquisitorial Approach to the evidence of children*" an article by Dr. Karen Muller, Law Faculty, Vista University, SA (<http://www.crisa.org.za/volume4/ia.html> accessed on 12-5-2012 at 15:27).

43. Children are also found incapable of coping with cross examination. No doubt, doing justice to the accused's rights demand that the evidence of a witness to his or her guilt should be tested for its credibility. But to do so certain language devices are used during cross examination, which a child witness is incapable of fully comprehending, and in most cases, little or no modification is made by the parties in instances where the witness is a child. No consideration is given in terms of linguistic appropriateness, and comprehensibility; and concern for the child's psychology are "*peripheral at best, and totally exploited at worst.*" (Ref. Brennan and Brennan 1988; *Strange Language - Child Victims under Cross-examination*). A judge of a South African Court observed (*Klink v Regional Court Magistrate NO and Others* 1996(3) BCLR 402 SE) that:

"It is sufficient to say that I am quite convinced that a child witness may often find it traumatic and stressful to give evidence in the adversarial atmosphere of the courtroom and that the

forceful cross-examination of a young person by skilled counsel may be more likely to obfuscate than to reveal the truth."

44. The conventional adversarial trial process has been held to be not conducive to eliciting evidence from children. On this issue the Canadian court in *Regina v Toten* (1993) 16 CRR (2nd) 49 (Ontario C.A.) said:

"The public adversarial process is, however, a means to an end - the ascertainment of truth - and has virtue only to the extent that it serves that end. Where the established process hinders the search for truth, it should be modified unless the process or resource-based considerations preclude such modification."

It is thus the society's responsibility to create an environment that will maximize the accuracy of a child's evidence and minimize the stress experienced by that child while at the same time protecting the rights of the accused. Young children are also unable to think in an abstract, hypothetical manner. It is said that children tend to interpret questions literally, so questions must be specific in order to obtain the necessary information. This means that children will have difficulty in explaining their own thinking and will also not be able to explain how they came to a conclusion. These issues need to be taken into consideration while cross examining children. Questions will have to be asked in a literal, concrete fashion. Cross examination often fails with children because they are unaware of the importance attached to accuracy and consistency and are highly suggestible. Children do not understand the purpose of this technique and young children especially are not able to place themselves in a position where they can view matters from another perspective.

45. The legal system in India so far has not deliberated on child developmental psychology other than to issue guidelines prescribed for the examination of child witnesses based on basic knowledge of child psychology. To do justice to both the child (victim or witness) and the accused, there is the need for all interaction with children to be premised on some knowledge of developmental psychology. This link between the law and psychology has to be made. At the bare minimum, this will have to include attempts to create an ability to assess the developmental level of the child being interviewed; in the case of an abused child, knowledge of the psychology of abuse so that the interviewer has a knowledge of how victims of abuse react i.e. non-disclosure, recantation etc; the knowledge of age appropriate questioning techniques. Two scholars Harvey and Daun (1993) have stated that interviewers should have a knowledge of child development, children and communication, child memory and suggestibility, children and sexuality and the psychology of victimization. Such practices will be essential for reducing the confusion that arises from developmentally inappropriate interviewing practices and improve the accuracy of information provided.

46. A deeper study into the topic was made by the Judicial Commission of New South Wales in its report “*Child Witnesses: The Judicial Role*” (accessed on 12th May 2012, at http://www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/cashmore-child_witnesses-the_judicial_role.html at 17:17 hours, on 12th May, 2012)

“[33] The use of special measures such as pre-recorded interviews, closed-circuit television, and support persons are intended to make the court experience easier and less stressful for child witnesses. Sometimes, however, poor management of the practical aspects of these measures counteracts the benefits for the child and the reliability of their testimony.⁴⁰ In terms of the technology, judges and magistrates need to be sure that the child is able to hear properly and can see the person who is asking the questions if closed-circuit television (CCTV) is being used⁴¹ because children will not necessarily say that they cannot. Children should also not be able to see the accused and should not be visible to the court.⁴² Nor should they be required to watch the tape while their pre-recorded investigative interview is played to the court. The child is entitled to a support person if they so choose. That person should be allowed to be near the child and/or within their sight, and under new guidelines⁴³ may “bring to the attention of the sheriff/court officer issues affecting the child such as their need for a break, need to go to the toilet, health problems etc. The sheriff/court officer should inform the court (via phone connection) if there is any malfunction of the equipment in the remote witness room (such as problems with the sound quality or vision, or the accused being in sight, or the failure of air-conditioning, heating etc).”

Making the unfamiliar less intimidating

[34] While judicial officers and legal professionals are likely to feel quite comfortable in an environment that they know well, courts are formidable and intimidating environments for witnesses and others unfamiliar with their facilities and the processes. It is therefore important for children to feel welcome and to be introduced to the process. While court preparation can clearly help, judicial officers are well placed at the start of a child’s testimony to introduce themselves and the main players in court to the child, and to explain how things will be done — in developmentally appropriate language.⁴⁴ Children should also be informed when the link to the courtroom via CCTV is about to be broken for legal argument or other

reasons. With the child in another room, or in other remote facilities, those in the courtroom can be forgetful of the child's experience — “out of sight, out of mind”. Children have been left “out of contact” and unsure when the CCTV link is to be switched on again, in some cases even after the court has adjourned for lunch.⁴⁵

Providing breaks

[35] The court observation study in the child sexual assault specialist jurisdiction evaluation found that children's testimony lasted on average between two to three-and-a-half hours.⁴⁶ While the scheduled breaks for morning tea and lunch provided some respite for children from the questioning and being “on show”, sessions that extend beyond 90 minutes are well beyond the attention span of most children and many adolescents, particularly when they are under this level of stress.⁴⁷ Judicial officers can assist, however, by telling children they can have a break if they need one (to go to the toilet, for example) but also by monitoring the child's state and offering a break rather than requiring the child to ask for one. Some signs to watch for include fidgeting, evasiveness, an increasing number of “I don't know's”, silence/stopping answering altogether, hyperventilation, confused answers, trying harder and harder to find an answer they think might be wanted, and increasing distress or crying.⁴⁸ These signs indicate that the child or young person may be “tuning out” or distressed and that some judicial intervention is necessary.

↑ Conclusion

[36] There are therefore a number of ways that judicial officers can assist child witnesses and improve their court experience without affecting the rights of the accused to a fair trial. More importantly, by being sensitive to the needs of the child, they can model appropriate behaviour and set the tone of the court. While some aspects may appear to be little more than common sense, seeing the world through the “eyes” of a child is not intuitive and other aspects require more specialised knowledge

— for example, understanding what children are capable of in terms of their language, their conceptual understanding of time, sequence, and causality and an understanding of the dynamics of child sexual assault and children's likely reactions.

[37] There are a number of opportunities for judicial education and resources to assist judicial officers and others, including the recently published [Equality before the Law Bench Book](#) produced by the Judicial Commission of New South Wales. These resources and further discussion of the associated issues will hopefully increase the likelihood that judicial officers will see the need to intervene and do so appropriately to improve the reliability of children's evidence and to make the court process fairer and less intimidating for child witnesses."

47. In *Virender vs. State of NCT of Delhi* (Crl A. 121/2008, decided on 29.09.2009), a learned Single Judge of this Court had made detailed observations of the various elements which are involved in the recording of statement of child witnesses, who are victims of sexual offences, and indicated best practices which ought to be followed. These best practices are to be studied and assimilated in all criminal courts, not only in Delhi, but throughout the country. It would be therefore appropriate that the Law Commission of India takes up the subject, of best practices which should be followed by criminal courts, in examination of statements of child witnesses, as well as those child victims of sexual crimes with the ultimate objective of suggesting suitable amendments to the law. The Law Commission is directed to consider these aspects, and consult other bodies such as the National Commission for Protection of Child Rights and the National Human Rights Commission, for this purpose. The Law Commission is requested to furnish its report at its earliest convenience, having regard to the increase in crimes involving child sexual abuse. Pending its report, this

Court is of opinion that at least in Delhi, the Chief Justice should issue directions as regards the following aspects:

MAKING THE COURT ENVIRONMENT MORE CHILD WITNESS FRIENDLY

All trials involving child witnesses must be taken note of by Court Authorities before hand, to the extent that during such time that the statements of such child witnesses are being recorded under Section 164 CrPC, or the examination or cross-examination of these witnesses are to take place; arrangements shall be made beforehand to accommodate the needs of the child witnesses with respect to the following:

- a) Wherever child victims or child witnesses are involved, the police and investigating authorities are directed to ensure that statements of such victims or witnesses are recorded under Section 164 Cr PC at the earliest possible opportunity. The police shall ensure that such statements shall be recorded, as a rule.
- b) As far as possible, these proceedings should take place in a more wholesome environment than a criminal Court, and preferably in a Family Court Complex.
- c) The child should not be in an overly formalistic environment as they tend to intimidate child witnesses and affect their ability to participate fully in the trial, and definitely not in a Court Room or any adversarial setting.
- d) The Judge and Counsels may be informally attired for the interview with the child.

e) A neutral support person (such as Child Psychologist or Counsellor) with whom the child can have a good rapport should be present with the child. This individual may bring to the attention of the court issues affecting the child such as their need for a break, need to go to the toilet, emotional distress, health problems etc.

f) During the recording of statement under Section 164, the child shall not be separated from her (or his) parent or guardian, who accompanies her. At the same time, the presiding officer shall ensure that the said parent or guardian does not prompt the child, in the recording of the statement; the concerned judge shall put questions, in the manner indicated. While recording the statement, the child should be given adequate time and encouragement to narrate the incident witnessed by her or him.

g) i) A room or chamber (which shall be other than the regular court room) shall be suitably earmarked in each court complex by the concerned District Judge, or where there are more than one District Judge, the senior most among them.

ii) The dates on which the said chamber or room shall be available should be suitably earmarked or “booked” in advance, so that there is no confusion on the date of hearing, either for purpose of recording the statement under Section 164, or recording deposition in court.

iii) In case on one day, more than one case is listed or scheduled the time for each shall be set apart specifically.

iv) The concerned District Judge shall nominate an officer, which may include a judicial officer, who shall manage the use of the said chamber, and whose responsibility it shall be to ensure suitable scheduling of the dates on which various trials or recording of statements shall be conducted.

v) The concerned judge(s) presiding over trials involving child witnesses, or where child victims' depositions or statements are to be recorded, shall co-operate and follow the above procedure while fixing the date(s) of trial or recording statements of children, under Section 164.

PROCEDURE DURING TRIAL AND CROSS EXAMINATION

a) Child appropriate questioning techniques must be employed. The age of the child must be kept in mind with respect to the language used. Attention must be paid to the language used. Complex, technical, hypothetical, abstract and compound sentences should be avoided. Questions must be literal and concrete, tending to draw out information.

b) The neutral support person (described in the previous section) shall be present during the court deposition of the child, in addition to the parent or guardian as the case may be.

c) The court deposition of the child shall also be at the designated chamber/court room mentioned above (as in the case of recording Section

164 Cr. PC statement). The deposition may be video recorded and shall be duly certified by the concerned Judge.

d) During examination-in-chief, the child should be given adequate time and encouragement to narrate the incident witnessed by her or him.

e) Persistent and repeated questioning of the child witness should be avoided as it tends to mislead and confuse children who can easily be manipulated into contradictions, intimidated into silence and confused into general emotional or cognitive disorganization.

f) Judges should disallow inappropriate questioning which include questions that are misleading or confusing, unduly annoying, intimidating, offensive, oppressive, humiliating, repetitive, or harassing, and asked in a manner or tone way that is belittling, insulting or otherwise inappropriate.

g) Questions which are leading in nature should be avoided since children are easily misled and tend to confirm any information conveyed to them by an adult since they consider adults credible and competent.

48. As discussed previously, the respondent is convicted for the offence punishable under Section 376 (2) (f) IPC, and sentenced to undergo rigorous imprisonment for 10 years; he shall, pay ₹ 15,000/- as fine, which shall be given over to the victim, as compensation, by the State. In default of fine, he shall undergo 6 months simple imprisonment. The accused shall surrender before the Trial Court on 31-07-2012; the Registry is directed to transmit the records of this case, forthwith to the Trial court for that purpose. In addition,

the Court directs that the State shall pay to the victim the sum of ₹ 3,00,000/- as victim compensation in terms of Rule 3 & 5 read with Entry 2 to the schedule to the Delhi Victims Compensation Scheme, 2011 (notified on 2-2-2012) read with Section 357-A of the Criminal Procedure Code. The terms of the scheme entitle every rape victim to minimum compensation of ₹2,00,000/- and a maximum compensation of ₹ 3,00,000/-. Having regard to the facts of the case and the tender age of the victim, the Government of NCT is directed to pay the said maximum amount of ₹. 3,00,000/- to the victim. 80% of the amount shall be deposited in a fixed deposit, in terms of Rule 7 of the Scheme, in a nationalized bank, till the victim attains majority. Interest accruing on the said deposit shall be deposited in a separate account to be opened for the benefit of the minor victim for this purpose. The balance 20% shall be deposited in the said account. These directions shall be complied within six weeks. The Delhi Legal Services Authority, which is the designated body under the said Scheme, shall oversee the implementation of these directions. The State shall ensure that the victim is duly informed through her parents or guardians, within one week. The victim's parents or guardians and the concerned authority or official of the Govt of NCT shall appear before the Delhi State Legal Services Authority, for this purpose, on 20.07.2012. Criminal Appeal No. 179/2012 is allowed in the above terms. Order Dasti, to the parties, as well as the Home and Law Departments and the Commissioner of Police, Govt. of NCT of Delhi. The Registry shall also forward copies of the judgment to the Law Commission of India, the National Commission for Child Rights and the National Human Rights Commission of India, for appropriate action in respect of the reference made earlier in the judgment; a copy shall be made available to the Registrar

General to be placed before the Chief Justice of the Court, for appropriate action.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

July 13, 2012