

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

Judgment delivered on: December 20, 2013

+ CRL.A. 846/2010

RAMHER

..... Appellant

Through: **Mr. Neeraj Bhardwaj, Adv.**

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through: **Mr. Sunil Sharma, APP for the
State**

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 374 of the Code of Criminal Procedure 1973 (hereinafter referred to as Cr.P.C), the appellant herein seeks to challenge the impugned judgment and order on sentence dated 19.12.2009 and 18.01.2010, passed by the Court of Ld. Additional Sessions Judge-01, West, Delhi, thereby convicting the appellant for committing an offence under Section 376 IPC and sentencing him to undergo rigorous imprisonment for life together with fine in the sum of Rs. 50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. In ancient times an individual's acts were driven by self-righteousness based on morals and values he imbibed. Treading on the path of precedents these morals and values took the form of laws. Sadly over the years these very morals started deteriorating and need arose for more and more stringent laws in order to maintain law and order and to govern the human behaviour. Shockingly in recent years the crime growth of rape cases has increased to an alarming proportion giving an impression that there is no deterrence, despite rape laws have been made stringent through the recent amendment Act, 2013. Every act of rape and sexual assault on a woman deserves severe condemnation and award of requisite punishment in accordance with law but even out of such cases the most barbaric act and unsavoury is rape of a minor child which leaves one trembling. An act as that of rape of a minor child by her own father further shakes the very existence of a social fabric. The purity that a father-daughter relation carries, when shattered in such a manner, obliterates the sanctity and belief in any existing relation. A daughter looks to her father to protect her from outside evils and when the very same protector rips her apart, the trauma one suffers as a consequence of such an act cannot even be described in simple terms. What a plight of a

child who does not even know the seriousness of the offence committed upon her. The trauma attached to it destroys and shatters not only the normal growth of a child but her whole existence comes tumbling down. The beastly act of ravishing a child for exerting his position of a male dominance and violating her physical and mental well-being, is attitude of a savage tribe and not of a civilized society. To fathom the aftermath of the sentence of the happening of such tormenting act on the person is to add yet another monumental blow to her dignity. Taking note of such an extremely odious and debased offence, the Legislature recently by way of Criminal Law Amendment Act, 2013, incorporated a new clause under Section 376(2) IPC as clause (f) to cover cases where rape is committed in a fiduciary relationship. The sole object of this provision is to visit with a more severe penalty to the persons in near relation and position of trust and authority who more often than not commit sexual assault on the members of the family or unsuspecting and trusting young persons.

3. The case in hand unfolds the misery of yet another girl who became prey of the diabolic act of her father. The story unfolded by the prosecution in the chargesheet is set out as under:-

“As per the prosecution accused is the father of the prosecutrix. Initially prosecutrix was living with her maternal aunt (nani), three sisters and father in the house which belonged to her maternal aunt. But after the death of her maternal aunt (nani) six seven years ago, she started living with her father and sisters. About fifteen days prior to the information to police, prosecutrix was sleeping in the said house. When she opened her eyes she saw that her accused was entering his penis in her vagina. Thereafter accused also gave her beatings. After fifteen days of the incident prosecutrix went to the house of her maternal aunt(massi) and narrated her the entire incidence. The maternal aunt(massi) of the prosecutrix then called up police.”

4. In order to prove its case the prosecution in all, examined 16 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. and in answer to the incriminating evidence set up against him he pleaded his innocence and false implication in the case. In his defence the accused also adduced evidence by examining himself and three other witnesses.

5. Extensive arguments were addressed by the counsel for the appellant and the learned APP for the State. Mr. Neeraj Bhardwaj, counsel for the appellant raised number of contentions to assail the findings of the learned Trial Court both on merits and on order of sentence. Counsel also contended that the learned Trial Court failed to appreciate the fact that false allegations were levelled against the accused,

by the prosecutrix at the instance of her maternal aunt Mrs. Anju, whose sole intention was to grab the property in which the appellant was living with his children. Contention of the counsel for the appellant was that property bearing No. 129, Harijan Colony, Mundka, in which he was residing with his daughters was in fact owned by his mother-in-law but after the death of his mother-in-law, Mrs. Anju was the only surviving legal heir of her mother and therefore, she along with her husband hatched out a conspiracy to falsely implicate the appellant in the said rape case so that she could take the possession of the said property and, which ultimately she had taken after the appellant was arrested in the said case. Counsel thus submitted that the prosecutrix being a child of tender years of age was influenced and tutored by her aunt, in falsely implicating the appellant in a case of such a serious nature without knowing the consequence of the same.

6. The other contentions raised by the counsel for the appellant were that there are many vital discrepancies, improvements and embellishments in the testimony of the prosecutrix, who entered in the witness box as PW1. Pointing out such discrepancies and improvements, counsel contended that while deposing before the Court the prosecutrix in

her examination-in-chief stated that “when I opened my eyes my father was entering his penis in my vagina and thereafter my father gave me beating”, but during her cross she stated “I woke up when my father had lifted me from the bed and was taking me to the other room”. Another contradiction pointed out by the counsel in the testimony of PW1 was that in her cross-examination she deposed that when my father left for his duty in the morning I told my sisters about the wrong act done by my father” but in her further cross-examination she contradicted herself by deposing “I immediately told my sisters about the wrong act of my father when I went to other room to sleep”. Pointing out an improbability on the part of the prosecutrix counsel contended that she in her cross-examination stated that she did not remember the exact date, month and year when her father committed wrong act on her. Contention raised by the counsel for the petitioner was that it is highly improbable that the prosecutrix would not remember the date, month and even the year of such a grave and serious incident. Such a stand of the prosecutrix in her cross-examination further signifies that she was a tutored witness. Counsel further pointed out that the prosecutrix in her cross-examination stated that the appellant had done similar wrong act with her elder sister

Pooja, but the said statement was not corroborated by the prosecution by proving the statement of her sister Pooja in the witness box. Counsel also submitted that the prosecutrix in her cross-examination deposed that hearing her cries, her sister also woke up but the appellant told them to go to sleep again. This statement was also not corroborated by the prosecution by any evidence, as none of the sisters of the prosecutrix were examined in the evidence. Counsel for the appellant also contended that prosecutrix did not raise any alarm when the alleged offence of rape was committed upon her by the appellant, which shows false implication of the appellant. Counsel also submitted that rape was not possible in a small room where other adult persons were also sleeping with the prosecutrix.

7. Counsel for the appellant further contended that learned Trial Court also glossed over its sight from the fact that PW2 Mrs. Anju had visited the jail to meet the appellant so as to extract money from him and this fact of her visit in the jail was proved on record by the accused. Counsel also submitted that neither the forensic evidence nor the medical evidence supports the case of the prosecution and, therefore, the prosecution failed to prove the said offence of rape against the appellant. Counsel also

submitted that hymen of a female child can rupture even without intercourse under various circumstances like when a female does exercise, jumping, swimming, horse riding and at times even because of any accidental fall. Counsel for the appellant invited the attention of this Court to a relevant extract from Medical Jurisprudence and Toxicology Chapter XXVII page 444 dealing with the said subject. Counsel also argued that the MLC of the prosecutrix was not proved by the doctor, who had examined her, as PW-16, Dr. Ritu Singhal was not the competent witness to prove the MLC as she had never examined the prosecutrix. Counsel also argued that the prosecution failed to examine any neighbour or any other independent witness to prove its case although in the statement of the prosecutrix some names of the neighbours were mentioned by her. Learned counsel for the appellant also argued that the husband of PW2, Mrs. Anju was working as a sweeper in the concerned police station and the police also acted at his instance to falsely implicate the appellant in the above case.

8. Based on the above submissions, counsel for the appellant submitted that the prosecution has failed to prove the case against the appellant beyond the reasonable doubt and in the absence of any reliable

and clinching evidence, the conviction of the appellant is not sustainable in the eyes of law. In support of his arguments counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Narender Kumar vs. State (N.C.T.Of Delhi) AIR 2012 SC 2281**.

9. Refuting the above submissions of counsel for the appellant, Mr. Sunil Sharma, learned APP for the State vehemently contended that in a detailed judgment passed by the learned Trial Court each and every aspect as raised by the appellant in the present appeal has been threadbare discussed and learned counsel for the appellant has not pointed out any infirmity or perversity in the said judgment or in the order of sentence. Counsel also submitted that PW2 Mrs. Anju, maternal aunt of the prosecutrix was always maintaining best relations with the appellant and they have been visiting each other on festivals and other happy occasions including the birthdays of children of both the families. Attention of the Court was invited by the learned APP to the testimony of PW2 wherein she deposed about the cordiality in the relationship between the two families. Counsel also submitted that no daughter will stand up against her own father to falsely implicate him in such a shameless crime of rape where her own honour, dignity and prestige will come at the stake even if

someone in the family or otherwise instigate her in this direction. Counsel also submitted that the appellant has not succeeded to create any dent in the testimonies of various prosecution witnesses examined by the prosecution although the uncorroborated testimony of prosecutrix itself is sufficient to inculcate the accused. Counsel also submitted that the medical evidence also fully supports the case of the prosecutrix as her hymen was found ruptured and there was a clear opinion given by the doctor in her examination before the court that the victim has been raped. Counsel also submitted that the husband of Mrs. Anju, PW2 is merely a daily wager sweeper in the police station and, therefore, he was not in a position to influence the police in any manner. Counsel also pointed out that there was no litigation pending between the appellant and Mrs. Anju PW2 with regard to the property in question and absolutely false defence was raised by the appellant with regard to the said property to give colour to otherwise genuine and truthful version of the prosecutrix.

10. Based on these submissions learned APP for the State vociferously pleaded for upholding the judgment and order of sentence passed by the learned Trial Court.

11. We have heard learned Counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the Trial Court record.

12. Before we deal with various contentions raised by the learned counsel for the appellant to assail the findings of the learned Trial Court, we unhesitatingly observe that, Ms. Nivedita Anil Sharma, learned Additional Sessions Judge-01, West, Delhi has very ably dealt with each and every issue threadbare. In a case of rape, the case mainly revolves around the testimony of prosecutrix. As per the settled legal position, the conviction of the perpetrator of crime can be based even on an uncorroborated testimony of the prosecutrix. Why such a solemnity has been attached to the testimony of the prosecutrix is because ordinarily it is not expected of any girl to falsely implicate any person at the cost of running risk of her own dignity and prestige in the society. No doubt, there may be cases where the female may also stoop so low due to some personal vendetta, vengeance or rivalry or for settling some personal scores by falsely implicating a person in a crime of such a serious nature but such instances can be rare, and in such cases it is sine qua non for the

defence to bring on record sufficient and strong evidence to prove the motive behind the false implication.

13. The appellant herein is the father of four daughters. He had first married to Mrs. Raj, and after her death he married the younger sister of his wife, Ms. Neeta who also died. He was residing at the house of his mother-in-law who had also died six-seven years prior to the date of the incident. His only sister-in-law was Mrs. Anju-PW2 was happily married, living separately with her family and her husband, who was a sweeper in the same police station where the complaint was lodged. The main contention raised by the counsel for the appellant before this Court and even before the learned Trial Court was that it was Mrs. Anju- sister-in-law of the appellant, who instigated the prosecutrix to falsely implicate the appellant in a rape case so that she could grab the property which was being occupied by the appellant although the same belonged to her mother. Dealing with the contention, learned Trial Court in para 55 of the judgment observed that the accused has neither put any suggestions to PW-1, prosecutrix that she has made a false allegations against him at the instance of Mrs. Anju nor there was any evidence led by the accused to substantiate his case. Giving reference of the deposition of PW-1, learned

Trial Court pointed out that the prosecutrix in her court deposition categorically stated that her Mausi had never fought with her father over the property in question. The learned Trial Court also referred to the voluntary statement made by the prosecutrix where she deposed that her father used to say that he shall not let her massi take this house as the same became his house. On such deposition of the prosecutrix, the court took a view that such deposition in fact shows *mala fide* intention of the accused to retain the house of his late mother-in-law without giving any share to his sister-in-law Mrs. Anju. The learned Trial Court further held that while evaluating the evidence on record, in such like cases, the court must alive to the fact that in a case of rape, no self-respecting woman would come forward in court just to make humiliating statement against her own minor niece that she had been raped by her own father. The learned Trial Court also held that in cases involving sexual molestation, trivial contradictions which have no material effect on the veracity of the prosecution case shall be thrown out and due regard must be given to an otherwise reliable prosecution case. The learned Trial Court is correct in her said observation that the prosecutrix was ten years of age when the said horrifying and shameless act was committed by the appellant. It was

two room accommodation where the appellant was residing with his three daughters and as per PW-1 both rooms were connected with a common door. At the time of incident, two sisters of the prosecutrix were also sleeping in the same room along with the prosecutrix. As per the prosecutrix, on the horrid night, the appellant took her in other room and when she opened her eyes she found her father undressing her and entering his penis in her vagina. For better appreciation, the testimony of the prosecutrix along with her cross-examination is reproduced as under:-

“Accused Ramher is my father. Photo of Ramher which is attached on his warrant paper shown to the witness. Witness identified the accused by his photograph. Initially we were living in the above said house along with my Nani, three sisters and father. The house belongs to my Nani. My Nani had died about 6-7 years ago. My mother had already died. About 15 days prior to the information given to the police I was sleeping in the said house. When I opened my eyes I found that my father was entering his penis in my vagina “Mere papa ne apna peshab karne wala mere peshab karne wale mai de diya”. Thereafter my father gave me beatings. Thereafter I went to the house of my massi Anju and I disclosed these facts to my massi. My Massi informed to the police. The police had apprehended my father. My statement was also recorded by the Magistrate.

At this stage, sealed envelope is open out of which statement recorded u/S 164 Cr.P.C. of Komal is taken out and shown to the witness. She identified the

same. My statement is Ex.PW1/A and its bears my signature at point A in English.

At this stage, I-card of prosecutrix of L.K.G. of New Rana Public School, Mundka available on judicial file shown to witness. Witness identified the I-card. Same is Ex.PW1/B.

After the incident I am living with my massi Anju near Rana Public School, Mundka. I was also medically examined in the hospital by the doctor. Police had also seized my clothes vide seizure memo Ex.PW1/C which bears my signatures at point A. I can identify the clothes if shown to me.

XXXXXBY Mr.R.C.S.Bhadoria, Advocate Amicus Curiae of accused.

My father worked in a factory. I am not aware to whom my Nani had given her house at the time of her demise. My Nani's house is single storied. It is correct that I have three sisters and my mother had expired much earlier. My eldest sister's name is Pooja and she is aged about 17 years. She is married and lives with her husband. My second sister's name is Priya and she is aged about 9-10 years. She is not married. I am at number three. My youngest sister is Ashu and she is aged about 8 years. My father used to return house at 6.00 p.m. My Nani's house comprises of only two rooms and both the rooms are connected with a door. At the time of incident my two sisters namely Priya and Ashu were also sleeping in the same room as myself on the same bed. My father had taken me to the other room when he had done the wrong act (galat kaam). I had woken up when my father had lifted me from the bed and was taking me to the other room. Due to my cries my sisters had also woken up but my father told them to go to sleep again. My father had removed his clothes and he had also removed my

clothes. I had cried when my father had done the wrong act. The blood has came out from my vagina. (mere peshab Karne wali jagah se khoon nikla tha). The colour of my panty was green. The incident took place around 2-2.30 a.m. in the night. My father had pressed his hand on my throat while he committed the wrong act. I do not remember the colour of the under garment of my father. After committing the wrong act my father got up and went to other room where my sisters were sleeping and he went to sleep. Thereafter I also went to that room to sleep. When my father and myself went to the other room, my sisters had woken up. After my father had left for his duty in the morning I had told my sisters about the wrong act done by my father. Again said I had immediately told my sisters about the wrong act of my father when I had gone to the other room to sleep. I had also told the lady whom I address as "Dadi" who is my neighbour that my father has done the wrong act with me as he had done with my elder sister namely Pooja. Pooja had also confided in "Dadi" but Dadi did not take any action.

I do not remember the exact date, month and year when my father had committed the wrong act on me. The father had switched off the light of the room when he committed the wrong act.

My massi's house is at a great distance (bahut door). My massi's husband works as sweeper in a police station. After about 8-10 days of the incident I along with my father and sisters had gone to my massi's house. I had told my massi about the wrong act of my father. At that time her husband was not in the house. My massi told me that as my father has committed a wrong act I should inform the police. My Massi lives in a tenanted house. My massi has never fought with my father that as the house where we were residing was owned by my Nani, my massi should be given a share in the same. Vol. My father used to he

shall not let my massi take this house as it has now become his house.

My massi telephone the police of the same police station where her husband was working as sweeper and thereafter police came to my massi's house where my statement was recorded by the police. Then I was taken to the police station where enquiries were made from me. Then I was taken to the Sanjay Gandhi Hospital where I was medically examined. The doctor did not physically examine me but made me sit in a corner while the papers were prepared by the doctor. The doctor did not talk to me. When we left the hospital some papers were given to the police by the doctor. My massi's husband did not go to the hospital with me. My massi's husband was in the PS when the police made enquiries from me but he was made to leave the room. I was taken to the hospital in the night. I stayed at the PS during the night and in the morning the police brought to my massi's house. At the instructions of police I had gone to my father's house with my massi and had brought my clothes including my inner garments which were handed over to the police. My father's clothes were not taken by the police. Since then I am living in my massi's house along with my two sisters. I do not have any difficulty in my massi's house neither myself nor my sisters do any work except for helping my massi in the household work. After about 5 days of reporting of the incident I had come to the court where my statement was recorded by a Magistrate. I was accompanied by my massi, her husband and Savita, who is police women. I had told my massi about my father's wrong act at my massi's house and my sister Priya was also present at that time. "

14. The above testimony of the prosecutrix was fully supported by the statement of her maternal aunt (Mausi) Mrs. Anju- PW2 and as per PW-2

she had invited the entire family of the appellant to celebrate the birth day of her daughter on 31st January, 2009 when she was told by the prosecutrix about the said incident. Before reporting the matter to the police, Mrs. Anju-PW2 also got the incident confirmed from one of the sisters of the prosecutrix Ms. Priya. In her cross-examination PW-2 also deposed that when her brother-in-law, the appellant herein was leaving her house after the celebration of her daughter's birthday, the prosecutrix started crying and saying that she does not wish to go with her father. So much so, other two sisters of the prosecutrix also refused to go back with the accused. PW-2 in her cross-examination also deposed that she used to visit the house of the appellant on festivals and other occasions, he being her brother-in-law and similarly, the appellant also used to visit her house with his family. The testimony of PW2 remained unchallenged and unrebutted on material facts. The appellant also could not put up his defence to prove that the said witness had any motive of grabbing the property or that it was at her instigation that the prosecutrix had falsely implicated the appellant. It is also an admitted position between the parties that there was no exchange of any legal notice or any litigation pending between the parties or any kind of fight between them or even

any police complaint with regard to the property in question. It appears that finding no answer or explanation of the said shameless incident of rape, the appellant had raised a false defence by attributing ill-motive to Mrs. Anju. The defence raised by the appellant also does not inspire any confidence not only because of the fact that normally no child would falsely implicate her own father in such a serious case even at the instigation of others but also because there exist no circumstance for this small child to implicate her father especially when there was no one else to take care of the prosecutrix and her two other younger sisters except the appellant himself. It is also worth noticing that the other two sisters of the prosecutrix also refused to accompany their father after the birthday celebrations of the daughter of PW-2, Mrs. Anju were over. Giving due importance to the uncorroborated testimony of a prosecutrix, the Apex Court in the case of *State of Himachal Pradesh v. Asha Ram, reported in AIR 2005 (9) SCALE 371* held as under:-

“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 a victim, a rapist degrades the very soul of the helpless female. The Court, 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."

15. In the case of ***Bharwada Boginbhai Hijri Bhai v. State of Gujarat***, reported in 1983 Crl. L. J. 1096, the Apex Court while dealing with the testimony of the victim of sexual assault in the absence of corroboration held as under:-

“Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because :(1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever

occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbors. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance, with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honor is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honor. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on

par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World, Obeisance to which has perhaps become a habit presumably on account of the colonial hangover. We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities-factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune”.

16. In the case of ***State of Punjab vs. Gurmeet Singh***, reported in ***1996 CrL. L J. 172A***, the Apex Court took a view that the courts dealing with rape cases shoulder the greater responsibility and they must deal

with such cases with utmost sincerity. Relevant part of the same is reproduced as under:

“A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness Under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction of her evidence unless the same is shown to be infirm and not trustworthy. If the totality and the circumstances appearing on the record of the case disclose that the prosecutrix does not have' a strong motive to falsely involve the person charged, the court

should ordinarily have no hesitation in accepting her evidence."

17. The other contention raised by counsel for the appellant was that there are many vital contradictions, improvements and embellishments in the testimony of the prosecutrix and therefore, no reliance can be placed on such shaky deposition of the prosecutrix. The contradictions, which were pointed out by counsel for the appellant were that the prosecutrix in her examination-in-chief deposed that when she opened her eyes she saw her father entering his penis in her vagina and thereafter her father gave her beatings but in her cross-examination she deposed that when she woke up then her father had lifted her from the bed and taken her to the other room; and the other being that in her cross-examination she deposed that she told her sisters about the wrong act done by her father after her father left for duty and in the later cross-examination she deposed that she had immediately told her sister about the wrong acts done by her father when she went to other room to sleep. This contention raised by the counsel for the appellant is also aptly discussed by the learned trial judge with the help of judgments of the Apex Court dealing with such kind of discrepancies and inconsistencies creeping in the evidence of the witness. The Trial Court was right in observing that the discrepancies and

inconsistencies which are comparatively of minor character and do not go to the root of the prosecution story, need not be given undue importance unless such discrepancies relates to material and vital facts of the case set up by the prosecution. Dealing with the aspect of minor discrepancies, contradictions, the Hon'ble Supreme Court of India in the matter of ***Jugendra Singh vs. State of U.P reported in AIR 2012 SC 2254*** held as under:

“The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

18. It is thus quite normal that minor contradictions and discrepancies may appear even in the testimony of a most enlightened witness and it is

more normal where there comes a wide gap between the period when the statement was made to the police and deposition made in the court. In the judgment reported as ***Bharwada Boginbhai Hijri Bhai v. State of Gujarat, reported in 1983 Crl. L. J. 1096*** the Hon'ble Supreme Court broadly pointed out the reasons due to which discrepancies, contradictions and improvements occur in the testimonies of the witnesses and the same are reproduced as under:-

“The evidence of prosecution witnesses has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the A balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant.

Over much importance cannot be attached to minor discrepancies.”

19. In the light of the above legal position and taking into account the age of the prosecutrix, we do not find that there was any kind of major discrepancy or contradiction in the entire deposition of the prosecutrix to disbelieve her, infact the testimony of the prosecutrix remained cogent, coherent and consistent on material facts. The contradictions, discrepancies as pointed out by counsel for the appellant are insignificant and inconsequential.

20. We also do not find any force in the contention raised by counsel for the appellant that the deposition of the prosecutrix lacked sanctity as she did not remember the date, month and year of such a grave incident which had taken place in her life. As already discussed above and taking into consideration the age of the prosecutrix and her educational background and poor intellect level, non disclosure of date, month and year of the incident cannot discredit or shatter the unflinching and unimpeachable evidence of the prosecutrix with regard to the commission of the act of rape upon her.

21. The next contention raised by counsel for the appellant was that the prosecution failed to produce elder sister of the prosecutrix with whom

also the accused had done similar wrong act as per the deposition of the prosecutrix in her cross-examination. This contention raised by the counsel for the appellant also lacks merit. There was no need for the prosecution to have examined Pooja to stand in support of the prosecutrix as in a case of rape, the testimony of the prosecutrix herself is of prime importance and conviction of an accused can be based even on an uncorroborated testimony of the prosecutrix provided that the same inspires the confidence of the court. The examination of Pooja by the prosecution would not have made the case of the prosecution stronger, likewise non examination also cannot weaken the case of the prosecutrix as the incident of rape which had happened with the prosecutrix has to be proved by the testimony of the prosecutrix, medical evidence and other corroborated evidence to support the commission of the crime which took place in the present case and not to a crime which had taken place with someone else in earlier point of time. Rather, it was for the defence to have produced Pooja and her other two sisters to prove the high moral character of the father and his alleged false implication by the prosecutrix.

22. The other contention raised by counsel for the appellant was that the prosecutrix did not raise any alarm when the alleged offence of rape was committed on her and the rape was not possible in a small room where the other children were also sleeping with the prosecutrix. The answer to his argument is rightly given by the learned Trial Court that the perpetrator of the crime was none else but the father of the prosecutrix and the prosecutrix herself was a little girl of average understanding who could not have understood the gravity of the offence, therefore, it was not expected of her to have come out to the house to raise an alarm. So far as other contention of counsel for the appellant is concerned that the rape was not possible in a small room where the other children were also sleeping is concerned, suffice it to mention that as per the prosecutrix there were two rooms connected with a common door and the prosecutrix was picked by the accused from one room and then was taken to the other room. The other contention raised by counsel for the appellant was that PW-2 – Mrs. Anju had visited the jail so as to blackmail the appellant and this fact of her visit was duly proved on record by the accused. The learned Trial Court has already dealt with this issue in paragraph 59 of the impugned judgment and we find no reason to disagree with the same.

Learned Trial Court has observed that since 16th February 2009 till the evidence of the accused record on 3rd October 2009, he did not make any such submission that Mrs. Anju had visited him in jail and threatened him and therefore, no credence can be given to such a false plea raised by the accused. Yet another contention raised by the counsel for the appellant was that husband of PW-2, Mrs. Anju was working as a sweeper in the same police station where the present FIR was registered and the police officials of the said police station had falsely implicated the appellant at the behest of Mrs. Anju. This argument of the counsel for the appellant is also devoid of any force and the same is rather misconceived. We cannot believe that a sweeper working on contract basis in a police station would be in a position to influence his higher ups to falsely implicate the appellant that too in a crime of such a serious nature at the hands of his own daughter.

23. Dealing with the last contention of counsel for the appellant that neither Forensic evidence nor the medical evidence supports the case of the prosecution and therefore the prosecution has failed to prove its case against the appellant. The prosecutrix in the present case was medically examined on 12.01.2009 and her MLC was proved on record as Ex. PW-

8/A, as per which, the hymen of the prosecutrix was found ruptured and hymen could admit one finger. PW-16, Dr. Ridhi Singhal in her cross-examination clearly stated that as per the MLC, the patient has been raped. Dr. Ritu Singhal in her deposition stated that she was working as doctor with Dr. Mohita and she can identify her handwriting and signatures. She also deposed that Dr. Mohita has left the services of the hospital and therefore she could depose in her place. No counter suggestion was given by the defence to refute the testimony of PW-16 that the patient was not raped. The MLC also clearly shows that the hymen of the prosecutrix who was just 11 years of age was found ruptured. The said medical evidence proved on record fully corroborates the testimony of the prosecutrix that on the fateful night she was raped by her father.

24. So far as the other contention raised by the counsel for the appellant that there was no semen found on the vaginal swab of the prosecutrix, as per the FSL Report and therefore, no rape was committed upon the prosecutrix, is concerned, it is again an argument worth outright rejection. Prosecutrix (PW-1) in her unrebutted testimony deposed that she had a bleeding from her private part after her father has inserted his

penis into her vagina. She also deposed in her cross-examination that she cried when her father had done the said wrong act. Although the said testimony of the prosecutrix does not require any support either from the medical or the forensic evidence as the same are only corroborative evidences, yet in the facts of the present case the medical evidence fully supports the case of the prosecutrix and so far as the Forensic evidence is concerned, the learned Trial Court is right in observing that the incident had occurred about 15 days prior to her medical examination and it was not improbable that with the bleeding, the semen also might have flown alongwith the blood through private part of the prosecutrix. The Trial Court is also right in taking a view that to constitute an offence of rape, it is not necessary to prove that there was a complete penetration with the penis alongwith the emission of semen. Learned Trial Court also placed reliance on judgment of the Hon'ble Apex Court in ***Ramkripal vs. State of M.P., (2007)11SCC 265*** wherein the Hon'ble Apex Court observed that the *sine qua non* of offence of rape is penetration not ejaculation. We are in complete agreement with the said finding of the learned Trial Court and we find no reason to disagree with the same.

25. In the light of the above discussion we are not persuaded to agree with any of the contentions raised by counsel for the appellant. We also do not find any reason to disbelieve the testimony of the prosecutrix who is none else but the daughter of the appellant. No daughter can be expected to stand against her father to falsely implicate him that too in a crime of such grave and serious nature, where not only her own prestige, honour or chastity is at stake but the prestige and honour of her entire family would get ruin. Dealing with the case of identical nature, the Hon'ble Apex Court in the case of *Dildar Singh vs. State of Punjab*, AIR 2006 SC 3084 took a view that in the normal course of human conduct an unmarried girl who is a victim of sexual offence would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in narrating such incident and with the feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy.

26. While committing an act as unsavoury as that of rape of his own minor child one not only forgets that it will destroy not only the life of the victim but his own life. The trauma attached as an aftermath of such acts not only victimises the immediate sufferer but also the offender. An act

done in the moment of rage mutilates the whole family and every existing relation with the offender. The remorse that sets upon the offender subsequently cannot free the offender of the virulent act he committed. The question that perturbs us or rather desolates us by the recent alarming increase in number of rape cases how can an individual, even after the introduction of such stringent laws be ignorant of the consequences of his act. The moral obligation of repentance and self-condemnation seems to be diminishing in this era. It's high time when men folk need to be gender sensitized from the very beginning from school to colleges to treat women not as sex objects but as an equal human being. The emboldening of the law should act as a deterrent to the prevalence of flouting the law with impunity. This can only be done through mass awareness and the media has a big role to play in this movement of great change in society. Thus for the better implementation of these laws we feel that a joint endeavour is required to be made on the part of the society at large to create an awareness of the legal ramifications of their vicious acts. The most potent tool to create awareness is to educate the public of the new law and create awareness about the rights of the victims and at the same time the severity of the punishment of the offence committed. In this

regard, we also gave directions in the matter of **Beeru vs. State Criminal Appeal No. 1079/2010**. While emphasizing and reiterating the same, we advise the appropriate Government Authorities, Non Governmental Organisations, Bar council of India, various State Bar Councils, Bar Assemblies, Delhi Legal Services Authority and law colleges and institutes to take effective steps in this direction to sensitize people and create awareness amongst them about the latest amendments and other laws dealing with the various sexual offences and the punishments provided for such offences.

27. Now coming to the quantum of sentence. In the matter of ***Khem Chand vs. State of Delhi*, ILR (2008) Supp. (5) Delhi 92**, the Hon'ble Division bench of this court laid down the following parameters for assessing the quantum of punishment in cases of rape upon a child:

- *Criminal and the crime are both important for the purposes of sentence.*
- *Manner of commission of the crime being with meticulous planning or one on the spur of the moment;*
- *Violence, If any, accompanying the crime whether injuries suffered were serious and required extensive treatment or have caused any permanent damage to the child bearing capacity or otherwise;*

- *Whether the offender or accused was in a position of fiduciary trust or exploited a social or family relationship;*
- *State of the victim, impact of the crime on the victim,*
- *The antecedents of the accused, his age, whether a first time offender or repeat offender, possibility of recidivism.*
- *Social backwardness or offender being a poor, illiterate labourer not found to be adequate reason by Courts.*
- *Passage of time since offence committed by itself considered inadequate reasons for reprieve.*
- *Rape victim's marriage or rehabilitation may be considered as a mitigating factor.*

28. In the present case the prosecutrix became the victim of such heinous offence at the hands of none else than her own father. In the matter of *State of Himachal Pradesh vs. Asha Ram*, reported in *AIR 2006 SC 381* the Hon'ble Apex Court while dealing with the case of rape of a daughter by the father held as under:-

“Here is the case where the crime committed by the respondent not only derelict the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime

may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 A.M. he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.”

29. Father is a fortress and prestige of his daughter and there cannot be a bigger sin than a father committing rape of his own daughter. Describing such act on the part of the father, not only a loathsome sin but also abhorrent, the Apex Court in ***Siriya @ Shri Lal vs. State of MP, AIR 2000 SC 2314*** held as under:-

“The case at hand shows to what bottomless pit speed of depravation and lust a person can go down. As indicated at the threshold, the custodian of the trust has betrayed the same. The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes an

unpardonable act. It is not only a loathsome sin, but also abhorrent. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father. The evidence on records clinchingly nails the appellant as the offender.”

30. In the case in hand also the perpetrator of the grave and shameless crime is none else but the pervert father who out of the lust for sex ravished the chastity of his own daughter giving a death hell to the most pious and sanctimonious relationship of father with his daughter. Another important facet which cannot be ignored is the horrifying suffering of the family when such a sinful crime is committed by none else but the father or other member of family. The appellant first got married with Mrs. Raj but she died after few years of the marriage. Thereafter appellant got remarried to the younger sister of his wife. After his remarriage with Ms. Neeta, the appellant started residing with his mother-in-law. The mother-in-law of the appellant had also died and after her death the appellant was residing with his three daughters in the property of his mother-in-law. The three daughters were of the age of eleven, ten and seven respectively. After the said beastly crime was committed by the appellant, all the three daughters started residing with their aunt (mausi) but for a temporary period and later these girls started residing with their paternal aunt, Smt.

Laxmi Devi (Bua). All the three girls were studying in school but due to the incarceration of their father they had to abandon their studies. Looking into the plight of these three helpless daughters, this Court had appointed Ms. Anu Narula, Advocate as *guardian-ad-litem* to take care of these daughters and to ensure that their education doesnot suffer. The court also took the assistance of Law Officer, Central Jail, Tihar for facilitating the education and admission of the minor girls to some good school in Rohtak. Mr. Sunil Kumar, Law Officer, Central Jail, Tihar with the assistance of an NGO secured the admission of these three minor girls in Decent High School, Rohtak.

31. Vide order dated 21st August, 2013 we directed the State to produce all the three children along with their paternal aunt (Bua) before the court on the next date so as to know as to whether the said three children are being looked after or not and more importantly whether they are continuing with their studies uninterruptedly. All the said three children were produced before the court on 24th September, 2013 and we were apprised that the said NGO was bearing all the educational expenses of the children and they were studying in a school known as ‘Decent Childcare Academy, Rohtak’. The officer of the NGO who was present in

court stated that the NGO remain in constant touch with the children so as to know their day to day requirements and they would always take complete care to fulfil the same with respect to their educational expenses, which includes their tuition fee, uniform, text books etc.

32. Ms. Laxmi-aunty (Bua) had also appeared along with these children and she also stated that for all other needs she was taking due care to the complete satisfaction of these children. The children were separately interviewed by the Court and they expressed their full satisfaction with regard to their day to day requirements being fully taken care by their aunty as well as the said NGO.

33. The age of these children presently are in the range of fifteen, fourteen and eleven and in the very near future they all will be of marriageable age. These unfortunate daughters were already deprived of their mother late Mrs. Leela at the time when they required her the most for their proper and healthy growth but the destiny gave another blow to these children when their own father did not spare his elder daughter and ravished her body and soul to satisfy his lust for sex. If we look at the heinous, barbaric and sinful crime which the appellant had committed with his own daughters, undoubtedly, he deserves severest of punishment

but when we look at these children who are without a mother and their father in jail certainly our concern and compassion goes with these children who were seen mercifully pleading for the release of their father.

34. In the matter of *T.K. Gopal v. State of Karnataka, reported in AIR 2000 SC 1669*, the Hon'ble Apex Court was confronted with a similar kind of situation where the appellant who was awarded sentence for a period of ten years for committing a rape of his girl child of one and half years did not enhance his sentence taking into consideration the fact that his two daughters became of marriageable age and they at least should not be made to further suffer the consequences of his bestiality, we are of the view that interest of justice will be best met if the sentence of life imprisonment awarded by the learned Trial Court is reduced to a period of 10 years rigorous imprisonment. The appellant has already undergone sentence for a period of more than five years including the period of remission earned by him, and therefore, he will remain in jail to undergo remaining period of his sentence. In such circumstances, we also direct the said NGO to continue taking complete care of the educational expenses of these children inclusive of their fee, uniform, text books etc and likewise Smt. Laxmi Devi-aunty (Bua of these children) shall also

continue to take care of these children for the day to day needs/requirements till at least the time the appellant comes out of the jail and rehabilitates himself to take care of his family.

35. In addition, this Court directs that the State shall pay to the victim the sum of Rs.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 Rs.2,00,000/- and a maximum compensation of Rs. 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 Rs. 3,00,000/- to the victim. 75% of the amount shall be deposited in a fixed deposit, for a period of three years in terms of Rule 7 of the Scheme, in a nationalized bank. 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 25% shall be deposited directly 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, within two weeks. The victim and the concerned authority or official of the Govt of NCT shall appear before the Delhi State Legal Services Authority, for this purpose, on 03.01.2014.

36. Order Dasti, to the parties as well as to the Home and Law Departments, the Commissioner of Police, Government of NCT of Delhi and Delhi Legal Services Authority, New Delhi.

37. In the view of the above the while maintaining the conviction, we modify the order of sentence to the extent that the punishment of life imprisonment is converted to sentence of ten years of imprisonment. The appeal filed by the appellant is partly allowed to the extent indicated above.

38. A copy of this order be sent to the Jail Superintendent and the appellant be informed accordingly.

KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

DECEMBER 20, 2013
v/pkb