

#

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 24.05.2016
Judgment Pronounced On: 08.08.2016

CRL. APPEAL 395/2014

SURENDER GUPTA

..... Appellant

Through Mr. Azhar Qayum, Advocate with Mr.
Narender Kumar, Advocate, Appellant
(in person in custody)

versus

STATE (GOVT. OF NCT)

..... Respondent

Through Ms. Radhika Kolluru, APP

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present criminal appeal under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') assails the judgment and order of conviction dated 10.01.2014 and order on sentence dated 13.01.2014, passed by the Ld. ASJ-01 (West), Delhi, in Sessions Case No. 22/12, in FIR No. 20/2012, registered at P.S. Kirti Nagar, whereby the appellant has been convicted for an offence under section 376 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo rigorous imprisonment for a period of 10 years and payment of a fine of

Rs.5000/- with a stipulation that in default of payment of fine, the appellant would further undergo simple imprisonment for a period of one month.

2. The gravamen of the charge, for which the appellant has been convicted, is, for having committed rape on the prosecutrix, a girl aged about 7 years (at the time of commission of the offence) on 18.01.2012.

3. Briefly, the facts of the case as are relevant for the adjudication of the present appeal are as under:

- i) The prosecution case, as unfurled, is that on 18.01.2012, Smt. Sujata (PW-1)/the complainant, mother of the prosecutrix, alongwith the prosecutrix, went to the police station to inform the police that the appellant had committed rape upon the prosecutrix at his house (jhuggi). Upon the statement of Smt. Sujata (PW-1)/complainant, DD Entry No. 43A dated 18.01.2012 (Ex. PW 6/A) was recorded. SI N.L. Yadav (PW-10) accompanied the prosecutrix with her mother, to the appellant's house where the appellant was not found and the house (jhuggi) was found closed.
- ii) On the same day, i.e. 18.01.2012, the prosecutrix was sent for medical examination to DDU Hospital where she was admitted for 15 days.
- iii) Thereafter, on 21.01.2012, FIR No. 20/2012 (Ex. PW-3/A) was registered at Police Station- Kirti Nagar, West Delhi, under section 376 IPC, against the appellant herein (hereinafter referred to as the 'subject FIR').

As per the subject FIR, the incident occurred on 18.01.2012 at the house (jhuggi) of the appellant, who was residing in the

same neighbourhood as the prosecutrix. Smt. Sujata (PW-1), alongwith her family of three children and her husband, was residing at B-588, Chunna Bhatti, Jawahar Camp, Kirti Nagar, Delhi, at the relevant time. On 18.01.2012 at around 04:00 P.M., the appellant approached Smt. Sujata (PW-1), seeking permission to take the prosecutrix, who was playing outside her house, with him on the pretext of giving the latter a toffee. Thereafter, the prosecutrix accompanied the appellant to his house (jhuggi). Later, on the same day, Smt. Sujata (PW-1), becoming worried that the prosecutrix had not returned home for a long time, went to the house of the appellant. She found the door of the house of the appellant locked from inside and heard the prosecutrix screaming from inside. After her vain attempts at knocking and pushing open the door of the house, she started weeping loudly. After some time, the appellant unlocked the door, pushed her and ran outside. She tried to apprehend the appellant but he managed to escape. Inside the house, she saw that the prosecutrix was weeping and that the undergarments of the prosecutrix were stained with blood, whereafter she took the prosecutrix with her to the police station and got DD entry No. 43A dated 18.01.2012 (Ex. PW 6/A) recorded against the appellant.

- iv) The detailed medical examination of the prosecutrix was conducted on 21.01.2012.

The medical opinion in the MLC report, dated 21.01.2012, (Ex. PW-13/A), *qua* the prosecutrix, returned a finding to the effect

that, “no tear, fresh injury or bleeding seen; hymen was found to be torn; no tear/bleeding seen inside the vagina”.

- v) Subsequently on 21.01.2012, at the instance of Smt. Sujata (PW-1), a site plan (Ex. PW 1/B) was prepared. On the same day, at the instance of the former, the appellant was arrested at 8.30 P.M., vide arrest memo dated 21.01.2012 (Ex. PW1/C). The medical examination (Ex. PW 2/A) of the appellant was conducted at DDU Hospital on the same day itself at 9.50 P.M.
- vi) The exhibits of the case (Exhibit 1- the undergarments of the prosecutrix; Exhibits 2a and 2b- the vaginal fluid of the prosecutrix; Exhibit 3- blood sample of the appellant) were sent for examination to FSL, Rohini.
- vii) Investigation was conducted and after the conclusion of the investigation, charge sheet dated 26.02.2012, under section 376 IPC was filed against the appellant before the court of Ld. MM, Tis Hazari Court, Delhi, and subsequently, the matter was committed to the Court of Sessions vide order dated 17.03.2012.
- viii) Charge was framed against the appellant under section 376 IPC, vide order on charge dated 03.04.2012, wherein, he abjured his guilt to the charge framed against him and claimed trial.
- ix) During the course of trial, the prosecution, to bring home the charges, examined thirteen witnesses, as summarised hereinbelow:
 - Smt. Sujata (PW-1) is the mother of the prosecutrix upon whose statement DD entry No.

43-A (Ex. PW6/A) was recorded by SI Krishan Kumar, P.S. Keshav Puram, Delhi (PW-6) and the same was marked to SI N.L. Yadav, P.S. Uttam Nagar, Delhi (PW-10) for investigation.

- Dr. Ajay Sharma, Medical Officer, DDU Hospital, Delhi (PW-2) conducted the medical examination of the appellant and proved the medical report (Ex. PW2/A).
- SI Parkash, P.S. Kirti Nagar, Delhi, (PW-3) proved the subject FIR (Ex. PW3/A).
- The prosecutrix was examined as PW-4.
- W-HC Vidya, P.S. Mianwali Nagar, Delhi, (PW-5) deposed that on the date of the incident, i.e. 18.01.2012, the prosecutrix was taken to DDU Hospital for the latter's medical examination.
- Ct. Satender, P.S. Kirti Nagar, Delhi (PW-7) deposited the exhibits of the case with FSL Rohini.
- ASI Ram Pal Singh, P.S. Nihal Vihar, Delhi, (PW-8) got recorded the statement of the prosecutrix under section 164 of the Code. Ms. Harleen Singh, Ld. MM (North East), Karkardooma Courts, Delhi (PW-9) proved, the said statement of the prosecutrix recorded by her (Ex. PW4/A) and, her certificate (Ex. PW9/A).

- SI N.L. Yadav, P.S. Uttam Nagar, Delhi (PW-10) went to the place of incident on 18.01.2012 with Smt. Sujata (PW-1) and accompanied the prosecutrix with Smt. Sujata to DDU Hospital. He collected the MLC result vide seizure memo (Ex. PW10/A). He recorded the statement of Smt. Sujata (Ex. PW1/A) and prepared a rukka (Ex. PW10/B) and got the subject FIR registered on 21.01.2012. On 21.01.2012, the appellant was arrested vide arrest memo (Ex. PW1/C) and taken for medical examination to DDU Hospital.
- SI Maya Devi, P.S. Paschim Vihar, Delhi (PW-11) deposed that on 21.01.2012, the investigation into the subject FIR was marked to her. The Site plan (Ex. PW1/B) was prepared by her at the instance of the Smt. Sujata (PW-1). On 21.01.2012, she got the statement of the prosecutrix under section 164 of the Code recorded through ASI Ram Pal (PW-8). The FSL Results (Ex. PX and Ex. PZ) were collected by her.
- HC Pooran Mal, P.S. Mundka, Delhi (PW-12) proved the relevant entry regarding the deposition of exhibits with him and handing over of the same for depositing with the FSL, Rohini (Ex. PW12/A and Ex. PW12/B).

- Dr. Sunita Seth, Specialist OBG, DDU Hospital, Delhi (PW-13) deposed that the prosecutrix was examined by Dr. Namita Gupta and the former proved the medical report of the prosecutrix (Ex. PW-13/A) which was prepared by the Dr. Namita Gupta, as the latter had since left the services at the DDU Hospital and the latter's whereabouts were stated to be unknown.
- x) The FSL results dated 10.12.2012 (Ex. PX and PZ) were obtained during the course of the trial. The findings/conclusion in the FSL Report read as follows:
- “The DNA profiling (STR analysis) performed on the exhibits provided was sufficient to conclude that the biological stains i.e. seminal stains present on exhibit ‘1’ (baby’s underwear) and exhibits ‘2a’, ‘2b’ (two microslides of vaginal fluid) were found similar to the source of exhibit ‘3’ (i.e. blood in gauze of accused).”
- xi) The appellant, in his statement under section 313 of the Code, denied the case of the prosecution. However, no evidence was led by the appellant in his defence.
- xii) The learned Trial Judge after appreciating the evidence brought on record by the prosecution, came to the conclusion that the prosecution had been able to establish the charge against the appellant and thus, convicted the appellant for offence punishable under section 376 IPC.

4. Learned counsel appearing on behalf of the appellant, would canvass that the learned Trial Judge has erred in convicting the appellant, in as much as, the testimony of the prosecutrix is unreliable as she is a tutored witness and has deposed at the instance of her mother. The counsel for the appellant would further submit that no medical evidence has been brought on record to support the case of the prosecution as the MLC of the prosecutrix shows that there was no fresh injury or bleeding in the private parts of the prosecutrix. Learned counsel appearing on behalf of the appellant would lastly urge that the mother of the prosecutrix has enmity with the appellant and has thus falsely implicated him in the case.

5. Ms. Radhika Kolluru, Ld. APP appearing on behalf of the State, would contend that the testimony of the prosecutrix has been corroborated by, and finds full support in, the testimony of the mother of the prosecutrix, Smt. Sujata (PW-1). Ms. Kolluru, Ld. APP, would further urge that the law enunciated with regard to convicting an accused for the offence under section 376 IPC, on the basis of sole testimony of the prosecutrix, is a well-settled proposition in view of various decisions rendered by the Hon'ble Supreme Court. Ms. Kolluru, Ld. APP, would lastly assert that the clear and unshattered testimony of the prosecutrix is sufficient to establish the case of the prosecution, if the same is found reliable, by the court.

6. I have heard counsel appearing on behalf of the parties, examined the documents and perused the entire evidence on record. The sole issue that arises for consideration in the present appeal is- *whether the testimony of the victim/prosecutrix deserves acceptance and ultimately, whether the prosecution has established the guilt of the appellant-accused beyond reasonable doubt.*

7. It is pertinent to observe that the question, whether conviction of an accused can be based on the sole testimony of the victim in cases of sexual assault/rape, is no longer *res-integra*. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments in cases of similar nature and it has been held that, the sole testimony of the prosecutrix if found reliable, can be relied upon for convicting the accused; and that the credit-worthy testimony of the victim in cases of such nature deserves acceptance.

8. The Hon'ble Supreme Court, in *State of Rajasthan v. Om Prakash*, reported as (2002) 5 SCC 745, dealing with a similar question in the case of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court therein, relied upon earlier decisions and made the following observations:

“13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In *State of Punjab v. Gurmit Singh* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316], referring to *State of Maharashtra v. Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused

where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

14. In *State of H.P. v. Gian Chand* [(2001) 6 SCC 71 : 2001 SCC (Cri) 980] Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined.”

(Emphasis supplied)

9. In the instant case, a plain reading of the subject FIR demonstrates that the appellant had taken the prosecutrix with him on the pretext of giving her a toffee and instead, took the prosecutrix to his house, where he committed rape upon her.

10. The statement under section 164 of the Code, made by the prosecutrix (Ex. PW4/A) was recorded before the Ld. MM on 04.02.2012. The said statement is reproduced hereunder:

“WO

Bagal vale uncle ne mujhe bulaya toffee dene ke liye. Vo mujhe apne ghar le gaye the. Usne apna pant utara aur mere kapde bhi. Fir usne apni luli mere andar daali. Main chillane lagi toh usne mera muh band kar diya. Mummy aayi toh voh bhaag gaya.”

(Emphasis Supplied)

11. The testimony of the prosecutrix (PW-4), as recorded at the trial, is reproduced hereinbelow:

“Without Oath

The witness is a minor girl, 8 years of age. At request of Ld. APP her statement is being recorded inside my chamber. Her mother is permitted to be present as a support person. The accused has been asked to stand outside my chamber with the door of the chamber open where he is able to hear the proceedings and see the computer screen. The prosecutrix is seated in a chair beside me so that she does not face the accused while her statement is being recorded. Apart from the prosecutrix, Ld. APP, the support person and the stenographer, Ms. Sadhana Singh from DCW and the Ld. Counsel Sh. Pushpendu Shukla for the accused are present inside the chamber.

The following questions are put to the witness to ascertain whether she is able to give the rational answers to the questions put to her:

- Q. What is your mother's name?
A. Sujata.
Q. How many brother and sisters do you have?
A. I have one brother and two sisters.
Q. In which class do you study?
A. I study in class 1st.
Q. Should you speak truth or lie?
A. Truth.

From the above answers, I am satisfied that the witness is able to give the rational answers to the questions put to her.

One uncle who is residing in my neighbourhood has taken me to his house on the pretext of giving me toffee. That uncle removed his underwear and also removed my underwear and penetrated his *Luli* (penis) into my urinating organ and I started bleeding. I shouted. That uncle pressed my mouth and ran away. I can identify that uncle.

The accused was called inside and the witness has identified him as the same person who has committed wrong act with her and to whom she is calling uncle.

At this stage one sealed envelope sealed with the seal of HS is opened and found to contain the statement of the prosecutrix u/s 164 Cr. P. C. which the witness stated that she has made the statement to a Lady Magistrate and the same is Ex.PW4/A bearing thumb impression of the witness

XXXXXXXXXX

Ld. Counsel has put the relevant questions to the court which I had put to the witness.

The accused has made me to lye on the floor and then come upon me. The accused used to visit our house prior to the incident. The accused has taken me into a room on the upper floor and closed the door. My underwear also got blood stained. My mother came there and also made a telephone call to my father. I was taken to the hospital. The accused had taken me in the evening time when I was playing with my sister Vandana. After the alleged incident, I was conscious. It is wrong to say that I am deposing falsely being tutored by my mother.”

(Emphasis Supplied)

12. A perusal of the testimony of the prosecutrix unequivocally reveals that the commission of the offence by the appellant is described in clear and unambiguous words and her testimony has remained consistent and unshattered even during cross examination. The prosecutrix successfully identified the appellant and stated that the latter was known to her as her neighbour who used to visit her house, whom she addressed as ‘uncle’.

13. It would also be relevant at this juncture, to reproduce the testimony of Smt. Sujata (PW-1), the mother of the prosecutrix, as under:

“On S.A.

I have three children i.e. two daughters and one son. The Prosecutrix is my younger daughter. On 18.01.2012, at about 4 p.m. I was present in my house along with my younger daughter, the prosecutrix, and my two other children had gone to the shop of my husband. My husband works as a labour in a timber shop near our house. Accused Surender Gupta present in court was living at some distance from our jhuggi. At the time of incident, my daughter the prosecutrix was playing outside our jhuggi and I was washing my clothes outside the jhuggi. Accused came to me at that time and told me that he was taking the prosecutrix along with him for getting her a toffee. I became busy in my household work. When accused did not bring the prosecutrix back for a long time I became worried and went to the jhuggi of the accused. I found that jhuggi of accused was closed from inside and I also heard screaming of the prosecutrix from inside the jhuggi. I tried to open the jhuggi by knocking and pushing the door of the jhuggi. Nobody opened the door of the jhuggi and I became suspicious and frightened. I started weeping loudly and accused opened the door after along time. I saw that my daughter was inside the jhuggi and was weeping bitterly in loud voice. The clothes of my daughter were blood stained at that time. I even saw blood on the clothes of accused but in the meanwhile accused ran away after pushing me when I tried to catch hold of him. I took my daughter in my lap and went to the PS directly. I was sent to the hospital along with my daughter for her medical examination since my daughter was bleeding. My daughter was admitted in DDU Hospital for 15 days. The blood stained clothes of my daughter i.e. frock and underwear was taken by doctor. My statement was also recorded by the police which is Ex. PW1/A bearing my signatures at point A. I had told police the place of occurrence i.e. jhuggi of accused and police prepared site plan at my instance which is Ex. PW1/B bearing my signatures at point A. Statement of my daughter was also recorded by the police. My daughter was studying in class first in MCD school. Statement of my daughter was also recorded by Magistrate in the court. Accused was arrested at my instance by the police vide memo Ex. PW1/C bearing my signatures at point A and

his personal search was conducted vide memo Ex. PW1/D bearing my signatures at point A. Accused pointed out towards his jhuggi on the first floor where he raped my daughter. Police prepared some papers in that regard which is Ex. PW1/E bearing my signatures at point A. Accused also made disclosure statement which is Ex. PW1/F bearing my signatures at point A and he admitted his guilt at that time. Accused was also sent for medical examination.

At this stage it is revealed that case property i.e. undergarments of victim has not been received from FSL and case property i.e. undergarments of accused has not been sent to FSL.

Remaining examination in chief is deferred for want of case property i.e. clothes of the victim.”

(Recalled for further examination)

“On S.A.

I can identify the undergarment of my daughter which she was wearing at the time of incident.

At this stage MHCM has produced parcel No. 1 sealed with the seal of SBP. On opening the same it was found to contain the remnant of sealing material and one baby undergarment of white colour which was identified by the witness. The undergarment is having dry blood stains and cut marks of FSL examination. The same is identified by the witness as of her daughter and same is Ex P1.

XXXXXXXXXX

The shop where toffees are sold are at a distance of about 15/20 yards from my jhuggi. Before this incident accused had not taken my daughter with him for getting a toffee to her. Accused was known to me and my family members but we were not on eating terms with accused. After accused took my daughter with him after about half an hour when he did not come back with my daughter I became suspicious. I had initially searched for my daughter around my jhuggi and in

the area when I could not find accused and my daughter so I went to the jhuggi of the accused. The door of the jhuggi of the accused was locked from inside and I had knocked the door. Then accused opened the door and I found my daughter in a very bad condition and was lying on the floor and she was crying a lot. She was wearing her cloth and her undergarments was stained with lot of blood. Accused had run away and I had taken my daughter to PS Kirti Nagar. Nobody from the neighbourhood had accompanied me when I went to the PS with my daughter. The accused was apprehended after about three days of the incident in my presence. I had not doubted the accused when he took my daughter for getting her a toffee. It is wrong to say that I had deposed falsely.”

(Emphasis Supplied)

14. Upon a plain perusal of the testimonies of the prosecutrix (PW-4) and her mother, Smt. Sujata (PW-1), the contention raised on behalf of the appellant to the effect that the Ld. Trial Court erred in relying upon the testimony of the prosecutrix on the ground that she is a tutored witness, cannot be accepted and is *dehors* any merit. The appellant has failed to controvert the testimony of the prosecutrix, which has remained unchallenged and unshattered even through the cross examination of the latter. Further the testimony of the prosecutrix finds complete support in the testimony of her mother which has also remained consistent throughout. No ground is urged on behalf of the appellant to point out any inconsistency whatsoever in the testimonies of these prosecution witnesses. A mere assertion that the prosecutrix is a tutored witness does not come to the aid of the appellant, when the former's statement is in fact corroborated by the evidence led by other prosecution witnesses.

15. Coming now to the medical evidence adduced, the medical opinion in the MLC result dated 21.01.2012, *qua* the prosecutrix (Ex. PW-13/A), states that “no tear, fresh injury or bleeding seen; **hymen was found to be torn**; no tear/bleeding seen inside the vagina”.

16. Further, the FSL report dated 10.12.2012, (Ex. PX), returned a finding/conclusion that, “The DNA profiling (STR analysis) performed on the exhibits provided was sufficient to conclude that the biological stains i.e. seminal stains present on exhibit ‘1’ (baby’s underwear) and exhibits ‘2a’, ‘2b’ (two microslides of vaginal fluid) were found similar to the source of exhibit ‘3’ (i.e. blood in gauze of accused).”

17. The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in the case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in the case of a child rape, a Division Bench of this court in **Lokesh Mishra v. State of NCT of Delhi**, in Criminal Appeal No. 768 of 2010, decided on 12.03.2014, relying on earlier decisions of the Apex Court, while upholding the conviction under section 376 IPC, made the following observations:

“39. The apex court in *B.C. Deva v. State of Karnataka*, reported at (2007) 12 SCC 122, inspite of the fact that no injuries were found on the person of the prosecutrix, yet finding her version to be reliable and trustworthy, the Apex Court upheld the conviction of the accused. The Court observed that:

18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynecologist pertaining to the medical examination of the

prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

(Emphasis supplied)

18. Although in the present case it is observed that vide the MLC result (Ex. PW-13/A), it has been opined that no bleeding was seen, it is relevant to note that the examination was conducted on 21.01.2012, three days after the date of the incident. Further, it has been clearly opined that the hymen was found to be torn. The FSL Report dated 10.12.2012 (Ex. PX) confirms that the seminal stains found on the underwear of the prosecutrix were similar to the blood sample of the appellant. On a combined reading of the MLC result and FSL result, it is patently clear that the medical evidence also corroborates the story of the prosecution. The contention raised on behalf of the appellant that, there being no fresh injury/bleeding in the private organs of the prosecutrix, no charge of rape can be sustained, does not hold water, particularly in view of a conjoint reading of the opinions rendered in the MLC report and FSL result. Injuries are not a *sine qua non* to prove a charge of rape. Let it not be forgotten that this is a case of rape on a girl child, aged about 7 years at the time of commission of the offence.

19. Therefore, in light of the above, I find no weight in the contention urged on behalf of the appellant that the medical evidence does not support the case of the prosecution.

20. On the question of observing caution while appreciating and placing reliance on the evidence of a child witness, it has been propounded by the

Hon'ble Supreme Court in various decisions that the evidence of a child witness cannot be rejected outrightly, and is required to be evaluated carefully and with greater circumspection as the child may be swayed by what others may tell him or her as the child is an easy prey to tutoring. Wisdom requires that the evidence of a child witness must find adequate corroboration before it is relied on. The court has to assess as to whether the statement of the victim before the court is the voluntary expression of the victim and that he/she was not under the influence of others. (Ref: *State of Rajasthan v. Om Prakash* (*supra*); *State of Himachal Pradesh v. Suresh Kumar @ DC* in Criminal Appeal No. 841 of 2002 decided on 29.05.2009.) In view of these observations made by the Hon'ble Supreme Court and having found no discrepancy in the testimony of the prosecutrix, which has been duly supported by the testimony of the mother of the prosecutrix and corroborated by the medical evidence on record, the testimony of the prosecutrix cannot be rejected.

21. Lastly, dealing with the ground urged on behalf of the appellant that the he has been falsely implicated in the case due to previous enmity between him and the mother of the prosecutrix, Smt. Sujata (PW-4), the same has not been supported by leading any positive evidence, in order to buttress this asseveration. It is clearly borne out from the evidence on record [statements of Smt. Sujata (PW-1) and the prosecutrix (PW-4)], that the appellant was living in the neighbourhood where the prosecutrix was also residing alongwith her family. Being known to the family of the prosecutrix as a neighbour, the unsuspecting mother of the prosecutrix, Smt. Sujata (PW-1), did not object to the request of the appellant to let him take the former alongwith him to buy her a toffee. Nothing has been stated by the

appellant while recording his statement under section 313 of the Code, to bring forth any incident of quarrel or enmity as is alleged by him, which would depict a hidden motive for Smt. Sujata (PW-1) to accuse the former of having committed such a heinous crime. In my view, this unsupported contention is not tenable, keeping in view the evidence adduced on behalf of the prosecution which fully corroborates the prosecution story.

22. It is trite to state that it is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39 which, *inter alia*, stipulates that the State shall, in particular, direct its policy towards securing that the tender age of the children is not abused and the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. [Ref: *State of Rajasthan v. Om Prakash* (*supra*)]

23. In view of the foregoing, in my view, the prosecution has established the guilt of the appellant beyond reasonable doubt. There is no gainsaying the position of law that there can be no quarrel with the proposition that as the testimony of the prosecutrix is unimpeached and beyond reproach, the conviction of the appellant could have been solely based on it. In the case at hand, the same has found thorough support in the evidence aliunde led by the prosecution.

24. In the light of the afore-said legal position and, facts and circumstances of this case, the issue raised in the present appeal is decided

against the appellant. The judgment and order on conviction dated 10.01.2014 and the order on sentence dated 13.01.2014 are upheld.

25. Accordingly, the present appeal fails and the same is dismissed. Trial Court Record be sent back.

SIDDHARTH MRIDUL, J

AUGUST 08, 2016

dn/sb

