

#J-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 11.03.2019

Judgment delivered on: 29.04.2019

CRL. A. 1241/2018

JITENDER SHARMA

..... Appellant

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Manu Sharma, Ms. Mahima Wahi and Mr. Kartik Khanna,
Advocates

For the Respondent : Mr. Ravi Nayak, APP with SI Sandeep, PS-Begampur and Inspector
Suman Kumari, Community Policing Cell, Outer District

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') assails the judgment and order of conviction and order on sentence dated 30.05.2018 and 05.06.2018 respectively, in Sessions Case No. 21/2013, titled as '*State vs. Jitender Sharma s/o Sh Om Prakash Sharma*', emanating from FIR No. 19/2013

(hereinafter referred to as the 'subject FIR') under Section 376/328 of the Indian Penal Code, 1860 and under section 4/6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station - Begumpur, Delhi.

2. By way of the impugned judgment and order of conviction and order on sentence dated 30.05.2018 and 05.06.2018 respectively, Jitender Sharma (hereinafter referred to as 'Appellant') was convicted for the offences under the provision of section 10 read with section 9 (m)(n) of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO') and sentenced to Rigorous imprisonment for period of seven years along with a fine of Rs. 5,000, as well as, under section 328 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') to Rigorous imprisonment for period of five years along with a fine of Rs. 5,000. In default of payment of fine, the Appellant has been sentenced to undergo simple imprisonment for a further period of one month. However, the benefit of the provision under section 428 Cr.P.C has been granted to the appellant. Both sentences were ordered to run concurrently.

3. The gravamen of the charge, for which the appellant has been convicted, is for having committed rape upon his own daughter/the

prosecutrix, a girl aged about 8 years, at the time of commission of the offence.

4. The facts of the case as borne out from the record are that on 17.01.2013 vide DD No.26A, a PCR call was recorded regarding rape by father with his own daughter, aged 8 years, at H.No B-1970, Kashmiri Block, Jain Nagar, Delhi. SI Dinesh along with Ct. reached the house where they met the mother of the victim who reported the rape committed by her accused husband, on their two minor daughters, V aged 8 years and M aged 13 years. NGO was called and victims were taken to SGM hospital where they were medically examined. The complainant S, PW-13, gave her statement that she is a house wife and has four daughters and a son and her husband runs a factory. On 11.01.2013, her husband committed wrong act with daughter V after taking her to some other room of their residential dwelling, and also threatened her not to tell anything to anyone or else she will be killed. On 13.01.2013 when she was cleaning the house, she found one blood stained underwear of V under the bed. On inquiry from the prosecutrix PW-3, told by the latter that her father lifted her from the bed in the night and lay her on a sofa and gave her a tablet after which she began feeling sleepy, and then he inserted his '*shushu wali jagah*' in her '*shushu wali jagah*'; and when the prosecutrix felt pain, her father again brought her

back to the bed. PW-3 stated that she conferred about this incident with her family members and did not report the commission of the offence to the police at that stage, but when her elder daughter M, who was living with her maternal grandmother came and informed her that, her father committed wrong act with her as well, which the former did not disclose because of fear, the complainant came to Police Station and lodged the subject FIR. After medical examination of the victim, her exhibit (one underwear having darker stains) was seized and her statement u/s 164 Cr.P.C. was recorded. IO collected the date of birth proof of the victim and sent samples to Forensic Science Laboratory (hereinafter referred to as 'FSL'). The accused was arrested and was medically examined; and while awaiting FSL result, the present chargesheet was filed.

5. By way of order dated 20.05.2013, charge was framed against the appellant for offence u/s 6 of POCSO Act read with u/s 376(2)(f) IPC and u/s 328 IPC for the offences committed against daughter V, to which the appellant pleaded not guilty and claimed trial.

6. In order to prove the charges against the accused, prosecution examined as many as 15 witnesses, whereafter the statement of the accused u/s 313 Cr.P.C was recorded, wherein he claimed himself to be innocent and having been falsely implicated in the case by his wife PW-13 (the mother of

the child victim) due to a matrimonial dispute. The Appellant chose to examine three witness in his defence including himself.

7. Broadly, the Trial Court has based the conviction of the Appellant on the testimony of victim V, PW-3 as hereunder :

“24.08.2011

Q. Kya hua tha ?

Ans. Me so rahi thi, papa aaye mujhe dawai khilayi. Meri kachhi uttari, apni kachhi uteri aur meri susu me apni susu laga rahe the.

Q. Aap kaha so rahethe ?

Ans. Hall me

Q. Papa kahan so rahe the ?

Ans. Lakdi wale kamre me. Hamare ghar me 3 kamre hain. 2 me farsh (floor) par mate lagawaya tha aur ek me lakdi lagawayi thi.

Q. Lakdi wale kamre me kaun kaun sota hai?

Ans. Wahan par mummy papa sota hai

Q. Kya aap pehle bhi court me ho ?

Ans. Ha

At this stage, the witness has been shown her statement u/s 164 Cr.P.C. i.e. Ex-PW-2/D and identifies her signatures at point “A” thereupon.

Q. Kya apne yeh baat kisi ko batayi thi ?

Ans. Nahi

Q. Mummy ko bataya tha ?

Ans. Nahi, mummy ki tabiyat kharab thi sara din behosh padi rehti thi

Q. Aur kisi ko bataya tha?

Ans. Nahi, papa ne dhamka rakha tha ki kisi ko nahi batana hai

XXXX By Sh.Ravi Kant Singh, learned counsel for accused.

Q.Aap kashmiri colony se pehle kaha rehte the ?

Ans. Shashtri Nagar

Q.Aapko mummy jyada pyar karti hai yah papa ?

Ans. Mummy

Q.Aap ko papa ne goli kaise khilayi thi.

Paani se yah kisi aur chij se ?

Ans. Aise hi khilayi thi.”

(Emphasis supplied)

8. Learned counsel appearing on behalf of the appellant, would canvass that the learned Trial Judge has erred in convicting the appellant, inasmuch as, the appellant has been falsely implicated in the case at the instance of PW-13, complainant/ mother of prosecutrix, who herself turned hostile. It would be apposite in this regard to extract the testimony of PW-13 as hereunder :

“I am a housewife and residing at the abovementioned address with my five children out of which four are daughters and one son. My husband, who is present in the court today as accused Jitender Sharma (witness has correctly identified the accused), was having his own work and running a factory of hydraulic machines. My eldest daughter M, who is aged about 15 years at present, is residing at the house of my mother.

I do not want to say anything about the present case as to why and how this case has been registered against my husband. One day a quarrel took place between me and my husband and my husband gave beatings to me and my daughters, due to which I got annoyed and went to PS. I had told to the police officials that my husband was harassing me but the police officials did not record my said statement and I do not

know why the police official had recorded my statement in such manner.

At this stage, witness is shown her complaint from the judicial file and she identifies her signatures at point "A" thereupon. The complaint is now exhibited as Ex-PW-13/A.

My daughter V is aged about 10 years at present. The present complaint was lodged by me in the month of January, 2013. My husband did not do anything wrong with my daughters M and V. Vol. He only gave 2/3 slaps to them. At present I want that my husband should be released as there is no earning member in my family and I generally remain ill. It was a simple quarrel between me and my husband which was given colour in the present form of complaint by the police.

(At this stage, Ld. Addl.PP for the State seeks permission to cross examine the witness as she is resiling from her earlier statement. Heard. Allowed.)

XXXXXXX by Ld.Addl.PP for the State.

I have studied upto 9th class. I did not go through the contents of Ex.PW-13/A before signing the same. Police officials also did not read over the contents of Ex.PW-13/A to me.

With great hardship, I am managing my household affairs and expenses. I get some stitching work from the tailors and do the same at home. All my children are school going and studying in different classes. Neither my in-laws nor my parental side are financially supporting me. The house where I am residing is belonging to my husband, which is constructed on a plot of 67 sq. yards. It is constructed upto first floor. I am residing on the first floor with my children and the ground floor is lying vacant. I am looking for tenant to let out the ground floor.

It is correct that my both daughters M and V were got medically examined. It is in correct to suggest that I got my both the daughters internally examined vide my statement encircled at point "Y" on MLC already Ex.PW-9/B. It is wrong to suggest that I had the doctors regarding the sexual assault upon my daughters in the alleged history on the MLC. I have no knowledge if the statement of my daughters was recorded by the police wherein both the daughters had narrated the incident regarding the sexual assault upon them by the accused Jitender Sharma. It is correct that my both the daughters were brought to the Court earlier also where they were examined by the learned MM in chamber.

At this stage, witness is shown site plan from the judicial file and she identifies her signatures at point "A" thereupon. The site plan is now exhibited as Ex.PW-13/B.

It is wrong to suggest that my daughters had even disclosed about the conduct of my husband before NGO Anuradha in my presence. It is wrong to suggest that I found blood stained underwear of my daughter V from under the bed or that I got suspicious and I asked about the reason from my daughter V, who had told me that my husband had lifted her from the bed and committed wrong act with her, after giving her some pills to eat.

It is correct that me and my children are completely hand to mouth and there is no other earning member in my family, I want to get my husband released. My father died in the month of February, 2012. It is also correct that my both daughters were produced before CWC and from there the custody of my daughters were handed over to me.

It is wrong to suggest that I have left my daughter M at my mother's house due to acts of sexual assault upon her by my husband. It is wrong to suggest that I have been won over by the accused and in order to save him being my husband, I am not deposing true and correct facts before the court. It is wrong to suggest that I am deposing falsely.

XXXXXX By Ms. Shivani Gautam, learned counsel for accused

My signatures were obtained on the blank papers by the police. It is correct that I did not give any complaint written in my hand in PS."

9. The counsel for the appellant would also submit that PW-13, complainant (mother of prosecutrix), who turned hostile clearly stated that one day quarrel took place between her and her husband, due to which she got annoyed and went to police station and told them about the harassment caused by her husband but police did not record her statement in the present

manner. PW-13 further deposed that her husband did not do anything wrong with her daughter except slapping her. PW-13 was, however, cross examined by Ld. APP, where she admitted that her daughter was medically examined and statement of her daughter was recorded u/s 164 Cr.P.C [Ex.PW-2/D], but contented that since no oath was administered by the Magistrate to the child witness, her testimony before Court lacks credence. In the cross examination by the defence counsel, she stated that her signatures were obtained on blank papers.

10. The counsel for the appellant would also submit that there has been a delay of seven days in registration of the FIR in the present case and no reasonable cause has been brought on record by the prosecution for the said delay. In this behalf, it would also be contended that, the Rukka [Ex.PW-13/A] was registered on 18.01.2013 which relates to an incident of 11.01.2013, whereas PW-13, mother of prosecutrix had discovered blood stained underwear of PW-3 and had become aware of the alleged sexual assault a week before, and yet no complaint was made by her promptly to the police, in this regard.

11. It would then be urged on behalf of the appellant that mother of the victim did not support the prosecution case and stated that accused never committed any wrong act with the victim V, and that the victim V is

inconsistent and made improvements in her testimony and cannot be believed. Further, the FSL result [Ex.PW-PX] is not conclusive. In this regard, our attention is drawn to the relevant portion thereof as hereunder:-

“Exhibit ‘2K’: One underwear having darker stains (of Prosecutrix Vanshika)

Exhibit ‘5’: Brown Gauze cloth piece described as ‘Blood sample’ (of accused)

RESULTS

Exhibit ‘2k’, i.e. underwear (of Prosecutrix Vanshika) it could not be compared with that of exhibit ‘5’, i.e. blood stained gauze cloth piece (of accused).”

(Emphasis supplied)

12. It was further urged that even the MLC [Ex.Pw-9/B] does not mention as to how and when the hymen got ruptured. It is also argued that as per Modi’s Medical Jurisprudence regarding sexual assault, the doctor should have noted the extent and position of the vaginal tear and the mere mentioning that the hymen is ruptured, does not satisfy the ingredients of establishing the offence that the victim was sexually assaulted beyond reasonable doubt. The doctor did not find any fresh external injury on the private parts of the victim in MLC [Ex.Pw-9/B], which is not possible if 8 years old girl child is forcibly sexually assaulted by fully grown up adult. The prosecution has, therefore, failed to prove that accused had sexually assaulted his daughter. No further grounds were urged by the appellant.

13. *Per Contra*, Mr. Ravi Nayak, Ld. APP appearing on behalf of the State would urge that the victim V was minor and there is no reason to disbelieve her testimony since there was no reason for her to falsely implicate her father. The MLC of the victim shows that the hymen was ruptured because of sexual assault perpetrated by her father and the testimony of the victim is reliable and trustworthy. It was urged that the prosecution has proved the guilt of the accused, beyond reasonable doubt. The Ld. APP, would further urge that the law enunciated with regard to the conviction of the accused for the offence under sections 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. The Ld. APP, would lastly assert that the clear, creditworthy and unshattered testimony of the prosecutrix is sufficient to establish the case of the prosecution, and the same is reliable.

14. We have heard counsel appearing on behalf of the parties, examined the material on record documents and perused the entire evidence. 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.*

15. 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 and has held that, the sole testimony of the prosecutrix if found reliable, can be the sole ground for convicting the accused; and that the credit-worthy testimony of the victim in cases of such nature deserves acceptance.

16. 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 in that behalf, 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 SCC384], referring to **State of Maharashtra v. Chandra Prakash Kewalchand Jain** [(1990) 1 SCC 550] 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] 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.”

17. Justice Krishna Iyer, whilst documenting his observations on absence of injuries on the victim, as well as, importance of corroborative evidence in rape cases, in his celebrated judgment in **Rafiq v. State of Uttar Pradesh** reported as (1980) 4 SCC 262 has very eloquently observed as follows:

“5. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggrieved.

6. When rapists are revelling in their promiscuous pursuits and half of humankind — womankind — is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable.”

18. Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly eight years old at the time of the unsavoury incident. In this behalf, it is relevant to observe that, the accused himself gave an affidavit regarding the date of birth of the victim at the time of admitting her to the school she first attended. The IO PW-15 has proved on record the birth certificate of victim V Ex.PW-15/K issued by the Municipal Corporation of Delhi. As per the certificate, the date of birth of victim V is 07.12.2004. The prosecution has resultantly proved that the victim was a minor at the time of alleged sexual assault and that victim V was less than 12 years of age, when she was sexually assaulted by the accused.

19. Further, upon perusal of the testimony made by the victim V, in her statement u/s 164 Cr.P.C it is observed that she has clearly stated that her father inserted his '*peshab wali jagah in her peshab wali jagah*'. In her deposition before the court too, she has been consistent and stated that her father was touching '*his shu shu wali jagah to her shu shu wali jagah*'. There is, therefore, no reason to disbelieve the testimony of victim V which is consistent and reliable and has a ring of truth in it. It was argued for the appellant that in her statement u/s 164 Cr.P.C she has stated that appellant

inserted his penis in her vagina whereas in court and to the police she stated that he only touched his penis on vagina, and as such she is not reliable. There is no force in this contention as the victim V was only 8 years old when she was examined and the subtle variation that exists is understandable in the testimony of an eight year old child, who is grappling to comprehend the complexity and enormity of what has actually happened with her.

20. A perusal of the testimony made by the prosecutrix which has remained unshattered in cross-examination unequivocally reveals that the commission of the offence by the appellant is described in clear and unambiguous words and her testimony has remained consistent during cross examination. The prosecutrix has clearly stated that her father/the appellant had committed rape upon her and thereafter threatened her with dire consequences if she told anyone about the incident.

21. Further, upon a plain appraisal of the testimonies of the prosecutrix and her mother, the contention raised on behalf of the appellant to the effect that the prosecutrix 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 despite being subjected to thorough cross examination.

22. In view of the foregoing, it is clear that the defence raised by the appellant that he has been falsely implicated in the case by PW-13/his wife and mother of the prosecutrix, because of some matrimonial dispute with him, is a mere after-thought. It is also relevant to observe that no cogent material apart from the suggestions made in the cross-examination has been brought on record by the appellant to establish his defence.

23. In this view of the matter, the bald defence raised on behalf of the above mentioned appellant that he has been falsely implicated in the case by his wife, the mother of the prosecutrix, PW-13, is rejected, in view of the cogent and trustworthy evidence adduced on record, which fully establishes the case of the prosecution.

24. Coming now to the medical evidence adduced; the medical opinion contained in the MLC report, dated 17.01.2013, [Ex. PW-9/B], *qua* the victim V, returned a finding to the effect that, “no fresh external injury marks present; hymen is ruptured”. No conclusive FSL Result has been obtained.

25. The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in a case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in a case of a child rape, a Coordinate 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:

“38. ...In the case of **Ranjit Hazarika v. State of Assam**, reported in (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view that the medical opinion cannot throw overboard an otherwise cogent and trustworthy evidence of the prosecutrix.

39. The apex court in **B.C. Deva v. State of Karnataka**, reported at (2007) 12 SCC 122, in spite 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.”

26. Thus, it is needless to state that, corroboration of the testimony of the prosecutrix, is not an essential requirement in a case of rape, and the same is not a *sine qua non* to bring home the guilt of the accused. The testimony of the prosecutrix, if well founded & trustworthy, is by itself sufficient to convict the accused.

27. Although, in the present case, it is observed that vide the MLC [Ex. PW-9/B], it has been opined that, no fresh external injury marks were found to be present, in keeping with the settled position of law as discussed hereinabove. Injuries are not a *sine qua non* to prove a charge of rape.

28. The Hon'ble Supreme Court of India in Abdul Sayeed vs State of Madhya Pradesh reported as (2010) 10 SCC 259, has enunciated that, whilst appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witness has to get primacy as medical evidence is basically opinionative. The relevant paragraphs of the said decision are extracted hereinbelow:-

“34. Drawing on Bhagirath's case (supra.)¹, this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

“ 21... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed

¹ State of Haryana vs. Bhagirath, (1999) 5 SCC 96

facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.²"

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XXXX XXXX XXXX XXXX

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

29. In light of the above, we find no weight in the contention urged on behalf of the appellant that the medical evidence does not support the case of the prosecution. We also observe that the MLC (Ex.PW-9/B) clearly finds that the hymen of the victim V was ruptured.

30. In view of the foregoing discussion, in our considered view, the prosecution has established the guilt of the appellant beyond reasonable doubt. There is no gainsaying in position of law and there can be no quarrel with the proposition that when the testimony of the prosecutrix is creditworthy, trustworthy, unimpeached and inspires confidence; the conviction of the appellant can be sustained based solely on it.

² Thaman Kumar vs. State (UT of Chandigarh) (2003) 6 SCC 380

31. In view of the foregoing legal position and the facts and circumstances of this case, the issue raised in the present appeal is decided against the appellant.

32. Further, let it not be forgotten that this is a case of rape on a girl child, only 08 years old at the time of commission of the offence, by her own father. Nothing can be more heinous than a crime committed on the person of a child by her father, the one who is duty-bound to provide her unflinching protection from all harm.

33. 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 Article 39 of the Constitution of India 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 that children are given environment 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)]

34. In our view, consequently, the sentence awarded to the appellant by the Ld. Trial Court also does not warrant any modification. Therefore, the

judgment and order on conviction dated 30.05.2018 and the order on sentence dated 05.06.2018 are both hereby upheld.

35. The present appeals are accordingly dismissed, with no order as to costs.

36. The Trial Court Record be sent back forthwith.

37. A copy of this judgment be communicated to the appellant through the Superintendent, Tihar Jail and also be sent for updation of the records.



**SIDDHARTH MRIDUL
(JUDGE)**

**MANOJ KUMAR OHRI
(JUDGE)**

APRIL 29, 2019
dn/di