

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CRA No. 23/2013
IA No. 39/2013
CrIM No. 619/2020
c/w
CONF No. 8/2013**

Pronounced on: 10. 08.2023

Yog Raj

...Appellant(s)..

Through:- Mr. Anmol Sharma, Advocate.

V/s

State of J&K and another

...Respondent(s)..

Through:- Mr. R.S.Jamwal, AAG.

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

PER PUNEET GUPTA-J:

1. The learned Sessions Judge, Udhampur, has held Yog Raj guilty for commission of offence under Section 376 RPC and convicted the accused and sentenced him to undergo rigorous imprisonment for life and also fine to the tune of Rs.10,000/-. In default of payment of fine the convict was to undergo further imprisonment for six months. The original challan file has been received by the Registry by way of reference from the trial court. The appeal has been preferred by the convict Yog Raj.
2. The judgment of the trial court is impugned on the ground that the same is not as per the fact and law and prosecution has failed to prove the case against the appellant beyond shadow of doubt. The statements of the prosecution witnesses are not creditworthy and the medical evidence also does not point towards the commission of rape upon the prosecutrix by the appellant as sought to be projected by the prosecution through the evidence produced in the challan.

3. The appellant shall be referred to as accused for purposes of the appeal.
4. The case set up by the prosecution against the accused in the challan is that a written complaint was filed by PW-Pushpa Devi (mother of the prosecutrix) against the accused on 25.07.2012 with Police Station, Ramnagar stating therein that on previous day the complainant had gone to her parental house and on 25.07.2012 at about 10.30 A.M. her 13 years old daughter visited the parental house of the complainant and mentioned that at about 9 A.M. when she was alone in her house the accused took her to his own field and tried to rape her. The prosecutrix tried to save herself from the accused but the father of the prosecutrix stripped the daughter of her clothes forcibly and committed rape upon her once. The daughter of the complainant feeling pain came to her house for informing about the incident. The complaint resulted into registration of FIR No. 106/2012 with Police Station, Ramnagar. The investigation carried out further resulted into presentation of challan against the accused under Section 376 RPC. The charge was framed against the accused under Section 376 RPC. The accused denied the charge and claimed trial.
5. The prosecution examined number of witnesses including the prosecutrix and mother of the prosecutrix. It is necessary to give brief account of the prosecution evidence.
6. **PW-Pushpa Devi** is mother of the prosecutrix and has given the account of alleged rape committed by the accused as per the version supposedly related by the prosecutrix to her. As per the witness, the accused committed rape upon the prosecutrix in the forest. The accused committed rape upon the victim number of times in different positions. She had informed of incident to brother. The daughter was medically examined by doctor in the hospital and her clothes were also changed. She is witness to the written complaint filed by her and FIR exhibited as EXP1/I and EXP2/II respectively. She is also witness to the seizure memo shalwar Ext.P1/II. The witness has also stated that the application was written by some police personnel. The day she went to her

parental house her children were at the house of her grandparents. The day she left for her parental house, her daughters had returned from her grandfather's house on the same day in the evening hours. Infact her daughter Radho Devi had visited her parental house and not the prosecutrix and asked to return to her matrimonial house. The witness has then deposed that she had not filed any case against the accused in Ramnagar Court though she was made to sign some papers in Ramnagar Court about 5/6 years back. The witness has also denied about the arrest of the accused in a complaint filed before Women Cell, Jammu. The accused had not entered into any fight with her while they were residing in Jammu. She had informed her brother Suram Chand about the occurrence. She was not having any mobile when she visited her parental house and has also denied that she had any altercation with the accused over the issue of mobile and because of this reason she had filed a false case against the accused. The witness has specifically denied she had fiddled with the private part of the prosecutrix and thereafter filed a false case against the accused.

7. **PW-X, prosecutrix**, has deposed that on 25.07.2012 her mother had gone to her parental house. She along with her younger sister and father was present in the house. She was asked by her father to bring the wood and the accused on being informed that there was no wood lying there she was asked to bring the same from the forest area. She went to the forest to fetch the wood and the accused also followed her. The accused caught hold of her breast and asked her to strip down her shalwar and on that she started crying. She was threatened with a stick when she opposed the action of the accused. The accused opened the string of the shalwar himself and closed her mouth. The witness has then deposed that the accused committed wrong upon her twice while she was laid on the ground and again committed wrong with her in a standing position. She also fell unconscious and the accused ran away from the spot. She came back to her house of her own. The witness has explained as to what wrong was committed by the accused. She informed her mother when mother was in her parental home. The

report was lodged with the police at Ramnagar Police Station. The witness has further stated that she felt pain in her private part. She handed over shalwar to the police and was also taken to Ramnagar hospital for medical examination. The statement recorded under Section 164-A Cr.P.C is correct and exhibited as EXT-P2/1. FIR is exhibited as EXT-P2/2. The police visited the spot on the second day of occurrence. After lodging the report she visited the house of Suram Chand. She was informed by her father that he had kept the wood in the jungle and she should bring the same but the accused had lied as there was no wood lying in the jungle. There was soil on the place of occurrence though her clothes were not soiled. The accused sexually abused her 3/4 times and also caused penetration in anus but she did not show the anus to the doctor. The witness has denied of having any dispute between her parents. The mother possessed the mobile but her father got it disappear on 23rd. Her mother left for her parental house on 24th. It is wrong to state that her father had sent her to the parental house of her mother. It is recorded in her statement under Section 164-A Cr.P.C only to the effect that the accused forcibly did wrong to her and not that the accused did wrong to her thrice. It is wrong to state that she had given the statement in the court as per the directions of her mother. It is wrong to state that her mother had fiddled with her vagina and involved her father in a false case.

8. **PW-Mohd. Arif** is Naib Tehsildar and has resealed the packets produced before him and issued authority letter in the name of Director FSL. The letter is marked as Ext.P4/1.
9. **PW-Nissar Ahmed** is the Investigating Officer and has stated about the investigation carried out by him which includes recording statement of the prosecutrix under Section 164-A Cr.P.C, seizure of articles and preparation of site plan marked as Ext. P8/I. He has also deposed that written application was filed before him in the case. He was present in the hospital when the prosecutrix was subjected to medical examination. The accused was arrested on 25.07.2012 on the day he was summoned to the police station for investigation. He was arrested at 11 PM. There was some soil

and grass also at the place of occurrence. The soil or the grass was not seized during investigation. The place of occurrence is having distance of 2/3 minutes from the house of the accused. No civilian came on spot despite being called by him. He cannot state when the re-sealed packet was sent to the FSL. There was no house nearby the place of occurrence and therefore no one was investigated in this regard. It did not come to light during the investigation that there was any dispute between the accused and his wife.

10. **PW-Dr. Renu Manhas** has also recorded her statement in the case. Her statement shall be referred to at appropriate place during the course of discussion.
11. As no other witness was produced by the prosecution, the prosecution evidence was closed. The accused denied the prosecution version during the statement recorded under Section 342 Cr.P.C. The accused produced Krishan Lal, Munshi Ram and Suram Chand in his defence.
12. **DW-Krishan Lal** is the father of the accused and has deposed about the strained relationship between the parents of the prosecutrix. The wife of accused had filed an FIR with the police and also tried to get accused killed. As the wife of the accused will not come to the house that is why she was given separate residence in his own land. There was some dispute between the parents of the prosecutrix as the wife of the accused was having a telephonic conversation with someone and the wife of the accused had gone to her parental house. He cannot say whether the case lodged against the accused is based on facts or not. There used to be some dispute occasionally between the parties and the same happened two days before the occurrence also when he was in his own house and was told of the dispute by the children.
13. **DW-Munshi Ram** has also stated about the strained relationship between the accused and his wife for the last 6/7 years. During panchayat it was decided that they should separate from each other. The wife of the accused had also tried to get the accused killed in Jammu and the accused had come back from Jammu to his own

house. The wife of the accused had made up the present case against the accused.

14. **DW-Suram Chand** is the brother of PW-Pushpa Devi and has stated that Pushpa Devi and the prosecutrix visited his house and Pushpa Devi informed him that she had some dispute with the accused over a cell phone and she wants to get a case registered against the accused. He has stated of the strained relations between accused and his wife. A false case has been set up against the accused. The day her sister visited him the accused was in his own house with the children. He did not visit the police station on 25.07.2012 with her sister Pushpa Devi or that the police had given a ring to him on superdnama on 25.07.2012. The document was not read over to him by the police. The accused is residing with Pushpa Devi in Ramnagar for the last two years and there was no court case between the husband and wife during this period though there used to be some dispute between them.
15. Learned counsel appearing for the appellant has submitted that the judgment passed by the trial court is against facts and law. The prosecution has failed to bring home the guilt against the accused beyond shadow of doubt. The occurrence as made out against the accused cannot be believed in the facts and circumstances of the case. Not only the statement of the prosecutrix does not inspire confidence, the medical evidence also fails to connect the accused with the commission of offence of rape. The judgment of the trial court is required to be set aside.
16. Learned Additional Advocate General appearing for the State has argued that the prosecution was able to prove the case against the accused beyond shadow of doubt. The solitary statement of the prosecutrix was infact sufficient to hold the accused guilty for offence of rape. The medical evidence also supports the version of the prosecutrix. The discrepancy, if any, occurring in the prosecution evidence is only minor in nature which does not affect the prosecution case in any manner.

17. The alleged occurrence of 25.07.2012 brought the accused in picture as he is accused of having committed rape upon his own daughter.
18. The case set up against the accused is that he committed the rape upon his daughter in a jungle when she went to fetch the wood on the asking of her father. The accused also threatened the victim before committing the rape upon the victim-daughter on the morning of 25.07.2012.
19. The wrongdoing committed by the accused was narrated by the prosecutrix to her mother who filed the written report Ext.P-1/1 before Police Station, Ramnagar on the day of occurrence itself. The same resulted into lodging of FIR No. 106/2012 EXT-P2/I under Section 376 RPC.
20. The statement of the prosecutrix if inspires confidence in the court so as to rely upon it without reservation is to be seen by the court. It is trite proposition of law that in case the statement of the prosecutrix is believable and found to be trustworthy the conviction can be based upon sole statement of the prosecutrix. The corroboration is not required in that case.
21. As far as the present case is concerned, the statement of the prosecutrix is to the effect that she was asked by her father to fetch wood and on being informed by her that there was no wood available she was asked to fetch the same from the forest. The accused came after her in the forest and committed rape upon her after confronting her in the forest. Her statement also reveals that the accused caught hold of her from her breast and asked her to open shalwar and further that she was threatened with a stick after she pleaded her father to spare her. The accused then opened the shalwar of the victim, gauged her mouth and committed rape on ground as well as in a standing position. The victim fell unconscious on the spot and the accused ran away. The occurrence was related by the prosecutrix to her mother who had gone to her parental home at that time.
22. Learned counsel for the appellant has submitted that the case set up by the prosecution is totally false as what has been mentioned by

the prosecutrix in statement before the court is not stated in the application filed before the police. There is no mention in the application Ext.P1/1 that the accused had asked the prosecutrix to bring the wood from the forest and that the rape was committed by the accused in the forest area. Indeed, the application does not speak of the accused having asked the victim to bring the wood from the forest area or that the offence was committed in the forest area. The application states of the wrongdoing having been committed by the accused in his own fields. The so called discrepancies which have occurred in the statement of the prosecutrix vis-à-vis the contents of the application are not fatal for the prosecution for the reason that the application was filed by PW-Pushpa Devi, mother of the victim and not the victim herself. The occurrence in any case is alleged to have taken place outside nearby the house of the victim. It may be noted that the site plan which is duly proved and exhibited as Ext.P8/1 records the place of occurrence which is near the forest area and the fields of the accused-Yog Raj. The place of occurrence though mentioned in the written complaint is stated to be the field of the accused yet the statement of the prosecutrix mentioning the place of occurrence as forest area will not make any difference when viewed in the overall facts of the case. The victim may not be knowing as to whether the place where the alleged occurrence took place belong to her father or is a forest area as there are trees nearby the place of occurrence. The place of occurrence being different one in the statement of the prosecutrix from what has been stated in the complaint is not fatal for the prosecution in view of the aforesaid aspect of the case.

23. It is argued on behalf of the appellant that the statement of the prosecutrix is not without blemish qua the very important aspect of the alleged rape having been committed upon her by the accused. The learned counsel has argued that in the statement recorded before the court she has stated that the victim was raped by the accused couple of times on ground as well as in a standing position whereas the statement recorded under Section 164-A Cr.P.C of the prosecutrix does not mention that she was raped multiple times by

the accused. The appellant has also referred to the statement of PW-Pushpa Devi, mother of the victim, to impress upon the court that the rape was not infact committed upon the victim and the allegation in any case is exaggeration only. PW-Pushpa Devi has stated before the court that she was informed of the occurrence by her daughter-victim and further that she has not mentioned in the application that the prosecutrix was raped twice. The statement recorded of the victim under Section 164-A Cr.P.C only states of the accused having committed rape upon the victim. It does not either say that she was raped once or multiple times in different positions by the accused. It only states that the accused opened the shalwar of the victim and committed rape upon her forcibly. The statement of the prosecutrix cannot be disbelieved only for the reason that she does not state as to whether she was raped once or more during the course of occurrence while recording her statement under Section 164-A Cr.P.C. Similarly, the prosecutrix stating for the first time that the accused did wrong with her anus during occurrence does not dent the statement of the victim as a whole. Any exaggeration in the statement will not make the statement wholly unreliable and the witness cannot be discredited. The statement of the mother on this aspect will not dilute the case of the prosecution when admittedly mother was not witness to the occurrence and has stated her version as told by the victim. The statement of the mother cannot by itself discredit the statement of the victim.

24. The other point agitated on behalf of the appellant is that it has come in the prosecution evidence that the earth was soiled one where the occurrence took place but the police did not bother to collect any evidence and produce the same before the court to cement its case against the accused. The Shalwar of the victim was soiled or not is not revealed from the document-supurdnama of seal used in the seizure of shalwar and exhibited as Ext.P-8/II. The court is of the view that every lacuna in the investigation cannot by itself weaken the case of the prosecution. The investigating officer should take care of all aspects of the matter during investigation.

No doubt, there is deficiency in the investigation to that extent. However, the court is of the view that the same is not fatal and does not cast any shadow on the case of the prosecution.

25. The victim has stated before the court that after the accused committed rape upon her she fell unconscious and came back to her house of her own. The submission of the learned counsel for the appellant that it is not evident from the statement of the prosecutrix that as to how she came back to her house when she regained consciousness after the rape was committed by the accused. The statement of the prosecutrix when analyzed reveals that the victim has stated that she came to her house of her own after she regained consciousness on the spot. The victim has not been examined by the defence as to how long she might have remained unconscious at the place of occurrence. She has also stated that there are houses of Surjo Devi and Parkash on way from jungle to her house and when she was on her way back from jungle no one from those houses met her. As the occurrence has not taken far away from the house of the victim it was not necessary that the victim should have met someone while on her way back from the place of occurrence. PW-Nissar Ahmad, Investigating Officer, has deposed in the court that the place of occurrence was at a distance of 2/3 minutes from the house of the accused.

26. In *Vijay @ Chinees Vs. State of Madhya Pradesh*, reported as 2010 (8) SCC 191, the Hon'ble Supreme Court held as under:

“20. It is settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, may not prompt the Court to reject the evidence in its entirety.”

27. The learned counsel for the appellant has also argued that the case set up against the accused is the result of the strained relations between the parents of the victim. The mother of the victim was inimical towards the accused and she filed the present case against the accused as a measure of revenge against the accused. He has referred to the statement of PW-Pushpa Devi, wife of the accused. The court has gone through the statement of the said witness. The ground agitated by the appellant is without any force. The

statement of PW-Pushpa Devi feebly records of some friction between her and her husband-accused as she has stated that she was taken to Ramnagar Court where her thumb impression was taken on some paper. She has also deposed that she had filed a complaint before Women Cell, Jammu and despite being summoned the accused did not visit the Women Cell. She has further stated that there was no fight between the parties while she was staying with her husband at Jammu. She has categorically denied that she got the accused arrested number of times by the Women Cell. The victim also rules out any serious issues having cropped up between her parents prior to occurrence. It may also be noted that the defense witnesses produced by the accused also do not make out any serious allegation against the mother of the prosecutrix so as to convince the court that the present case could be the result of revenge by PW-Pushpa Devi upon her husband. DW Krishan Lal is the father of the accused and his statement too does not reveal of serious row between the parents of the prosecutrix preceding the occurrence. In fact he has stated of the accused was residing with his family prior to the occurrence. Every friction or strained relation between husband and wife cannot be conceived as a reason for filing a false case against the other party more so when the same is of rape stated to have been committed by the father upon his daughter. The mother will not speak against her husband and the daughter will not normally speak against the father for such a heinous crime unless the same has occurred. The statements tried to have been relied upon by the appellant qua the so called strained relationship between husband and wife do not convince the court as reason for filing a false case against the accused. It is also very important to note that on the day of occurrence the victim was staying with her father. The mother of the victim was also residing with her husband during occurrence period though she was not in her matrimonial house on the day of occurrence itself and had gone to her parental house a day prior to the occurrence. It has not come on record that the victim was not residing with her parents when the occurrence took place and the

defence witnesses also state that husband and wife were together residing prior to the occurrence. Had there been any feud of serious nature between the husband and wife they would not have been residing together when the occurrence took place. The argument of the counsel for the appellant is far-fetched and does not cause any dent in the prosecution case.

28. In CrI A No. 1520/2021 decided on 01.12.2021 titled 'Phool Singh vs. The State of Madhya Pradesh', the Hon'ble Supreme Court relying upon the case State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration..."
29. The last but not the least, the argument raised by the appellant is qua the medical evidence that has come on record in the form of the medical certificate Ext.P7 issued by PW-Dr. Renu Manhas and her statement recorded in the court. It is profitable to refer to the statement of PW-Dr. Renu Manhas, gynecologist, who examined the victim on 25.07.2012, the day the alleged occurrence took place. As per the certificate of the doctor and her statement the patient had small abrasion (fresh) seen over posterior forchette of vagina at 6 O'clock position. Her hymen was not intact. In her opinion victim had been subjected to recent intercourse within 72 hours. Vaginal smear collected from posterior vaginal fornix of the victim tested positive for spermatozoa. The bottom of the shalwar worn by the victim was found to be stained with colourless fluid. As per the certificate issued by the doctor, the vagina admitted one finger easily and two fingers with difficulty. In cross-examination she has stated that the colourless fluid on the bottom of the shalwar of the victim was not blood but it was a noticeable stain. The injury to vagina can be caused by any external power other than the

sexual intercourse but in the present case the conclusion was that it was a case of sexual assault because of position of the injury and other factors. The victim was not used to sexual intercourse. It is further stated that as spermatozoa was found present in the smear of the victim the duration of sexual assault could be up to 72 hours from the time of examination. It is further stated by the doctor that as the victim has suffered injury on the vagina which was fresh in nature it means that the sexual assault was done within 24 hours. There was no bleeding but the abrasion was fresh which did not bleed on touch. It is not necessary that the victim of sexual assault even of tender age would bleed. No other external injury was found on the person of the victim other than the genitals. No blood was either found on the shalwar of the victim. The FSL expert can identify the spermatozoa to whom it belongs to.

30. The learned counsel appearing for the appellant has vehemently argued that the medical evidence brought on record does not conclusively prove the factum of the so called rape having been committed upon the victim by the accused. It is submitted that the medical evidence brought on record does not reveal that the spermatozoa, if any, found on the shalwar of the victim was of the accused. No DNA test was either conducted to match the semen of the accused with that found on the shalwar of the prosecutrix stated to have been seized during the course of investigation. There was no injury on any body part of the victim which could suggest that rape was committed as it has been stated by the prosecutrix that she was raped in the lying condition as well as in the standing position.
31. The other side has argued that the medical certificate read with the statement of the doctor who conducted the medical examination of the victim makes out in unfailing terms that the rape was committed upon the victim.
32. The statement of the prosecutrix is by itself inspiring one so as to exclude any possibility of the rape having not been committed by the accused. The statement of the doctor emphatically proves that the rape was committed upon the victim. The doctor is categorical in her statement that it is not necessary that in all cases victim of

sexual assault even of tender age would bleed. She has also deposed that injury to vagina can be caused by any external power other than sexual intercourse but she has qualified her statement by stating that in the present case keeping in view the position of the injury and other factors the conclusion drawn is that it was a case of sexual assault. The rape was committed upon the victim within 72 hours or within 24 hours of the medical examination is not clear from the statement of the doctor is also the argument raised on behalf of the appellant. The statement of the doctor clarifies in no uncertain terms that the sexual assault in the present case took place within 24 hours as the victim has suffered injury on the vagina which was fresh in nature.

33. In 'Krishan Kumar Malik vs. State of Haryana' reported as 2011 (7) SCC 130, the Hon'ble Supreme Court made observation that prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a full proof case, but they did not do so, thus they must face the consequences. The court made this observation keeping in view the other facts that were brought on record.
34. In 'State of Gujarat vs. Rattan Singh' reported as 2014 (4) SCC 16, the Hon'ble Apex Court took note of the deficiency in the medical evidence qua the other circumstances which came on record in a case set up against the accused under Sections 376 and 302 RPC to hold that the injuries referred on the private parts of the deceased did not point finger towards the capability of the accused.
35. In Criminal Appeal No. D-427 of 2006 decided on 23.02.2015 titled 'Naresh Dass vs. UT of Chandigarh High Court of Punjab and Haryana', one of the judges of the Division Bench held that though the forensic report states that the semen was found on the vaginal swap no DNA connection was attempted to establish with the blood sample of the appellant.
36. In Crl A No. 121/2008 decided on 29.09.2009 titled 'Virender vs. The State of NCT of Delhi', the Court on the facts and

circumstances of the case dismissed the charge of 376 against the appellant.

37. The aforesaid judgments produced by the counsel for the appellant are indeed on the basis of the facts and circumstances of those cases. Each case has its own peculiar facts and circumstances which determine the fate of the case. At the cost of repetition, the statement of the victim if found to be trustworthy and without blemish, the accused can be held guilty. The medical evidence in the present case read with the statement of the prosecutrix leaves no doubt in the mind of the Court that the prosecutrix was sexually assaulted by her father.
38. The testimony of the prosecutrix in unfailing terms brings home the fact that the accused committed rape upon her. The accused had also produced three witnesses in support of his case. However, the statements of those witnesses would not make out more than that the husband and wife had some altercation over the conversation which the wife had with someone over mobile to which the husband had objected to a day prior to the occurrence. However, this fact has been denied by the prosecutrix as well as her mother PW-Pushpa Devi. Even if this incident has happened and PW-Pushpa Devi left the matrimonial house for this reason the same is not a strong circumstance to rely upon and hold that this could be the reason to implicate the accused in an offence of the nature in which the accused is held guilty and convicted by the trial court.
39. It is also submitted on behalf of the appellant that the defence evidence produced in the case and particularly the statement of DW-Suram Chand, who is the brother of complainant PW-Pushpa Devi reveals that his sister has set up a false case against the accused. The maternal uncle of the victim has failed to substantiate the case of the prosecution which shows that the accused has been wrongly roped in the case. It may be mentioned herein that this witness was cited as prosecution witness in the list of witnesses but was given up by the prosecution on the statement of learned Public Prosecutor as he had stated that the witness has turned hostile. It appears that this fact was not brought to the notice of the court

while recording his statement. In any case, the statement of this witness does not cause any doubt on the prosecution case.

40. It is submitted on behalf of the appellant that there is nothing on record to prove that the victim was a minor at the time of occurrence. The trial court has dealt with this argument of the appellant by referring to the statement of the accused under Section 342 Cr.P.C where the accused has admitted the prosecutrix to be minor. The school record though not proved refers to the date of birth of prosecutrix as 02.01.1999 as the occurrence is of 25.07.2012 that means that the victim was about 13 years old at the time of occurrence. The Court is of the view that the trial court has not erred in holding that the victim was minor at the time of occurrence.
41. The accused had committed rape upon the victim who is his daughter is proved by the prosecution beyond shadow of doubt. No flaw by the trial in holding the accused guilty of the offence of rape.
42. The victim is the daughter of the appellant and the daughter had to suffer from the hands of the father who is supposed to be the protector of her life and honour. The act committed against the victim is heinous and diabolical and indeed unpardonable. The victim who is sexually assaulted by her own father, the devastating impact of the same will remain etched in the mind of the victim for rest of her life. Nothing more is required to be said on the act committed by the appellant and the consequences which the victim has to bear for rest of her life.
43. In *State of Himachal Pradesh v. Asha Ram*, reported as 2006 AIR SC 381, the Hon'ble Supreme Court of India held as under:

“....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...”

In this authority the court also took note of earlier judgment wherein it was held that the non-rupture of hymen or absence of injury on the victim's parts does not belie her testimony.

44. In case of Asha Ram(supra) the apex court not only set aside the acquittal recorded by the high court and maintained the conviction recorded by the trial court but also enhanced the sentence from 5 years to imprisonment for life as the victim was daughter of the accused.
45. The Court finds no reason to interfere with the sentence and fine imposed upon by the trial court on the appellant.
46. In the light of the discussion made the Court finds no reason to interfere with the judgment of the trial court and is upheld. The appeal filed by the appellant is dismissed. The reference is accordingly also answered.
47. The original record of the trial court be sent back by the Registry.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu :
10.08.2023
Pawan Chopra

Whether the order is speaking : **Yes/No**
Whether the order is reportable : **Yes/No**

Pronounced today by me in terms of Rule 138(4) of the J&K High Court Rules, 1999.

(Tashi Rabstan)
Judge

Jammu
10.08.2023