

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal No. 1687-SB of 2009

Date of Decision : 17.09.2015

Narinder Kumar Sharma

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Ms. Saloni Sharma, Advocate
for the appellant.

Mr. Manjit Singh Naryal, Addl.AG, Punjab.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment dated 08.05.2009, vide which appellant Narinder Kumar Sharma has been held guilty and convicted for the offence punishable under Section 376 Indian Penal Code, 1860 (for short I.P.C) and the order on the quantum of sentence of the even dated, vide which he has been sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 5000/-, in default thereof to further undergo imprisonment for a period two years.

2. The sequence of the events and catalogue of the facts leading to this prosecution are that PW-3 Pritpal Singh, the father of prosecutrix made his statement Ex.PC to SI Gurtej Singh, the Investigating Officer of the case alleging therein that on 23.02.2008, at about 05.30 p.m, her daughter, the prosecutrix aged about six years went to the house of the present appellant, their neighbour, for playing with children. When she returned, she disclosed that their girl child was not present in the house and accused told her that her friend Kumkum will come in few minutes and in the meanwhile, he will make her to play a computer game. Accused then laid the prosecutrix on a bed lying in the lobby. He removed her trouser (Pajami) and opened the zip of his trouser and started rubbing his private part on the private part of the prosecutrix and inserted the same in the private part of the prosecutrix. The prosecutrix asked the accused that she was feeling pain as to what he was doing. But even thereafter, the accused kept on pushing his private part inside and out the private part of the prosecutrix. After sometime, he let her off. The prosecutrix came to her house and disclosed the entire facts to her parents. The prosecutrix was taken to the Primay Health Centre, Goniana, where she was medico legally examined by PW-5 Dr. Kiranjyoti Goyal. On receiving the information, SI Gurtej

Singh reached the Primary Health Centre, Goniana and recorded the statement of Pritpal Singh Ex.PC. On the basis of which the FIR Ex.PC/2 was registered and investigation was started.

3. On 24.02.2008, the doctor produced one sealed envelope and a sealed parcel containing vaginal swab and the clothes of the prosecutrix which were taken into possession vide memo Ex.PL. The Investigating Officer along with police officials and the complainant went to the house of accused-appellant. One video game make Mirader Window was taken into possession vide memo Ex.PD. He also inspected the place of occurrence and prepared the rough site plan Ex.PM. On the same day, the accused-appellant was arrested. He was medico legally examined. On interrogation, he suffered the disclosure statement Ex.PF and got recovered one shirt, pent with belt and purse. These articles were kept in sealed parcels and were taken into possession vide memo Ex.PG. On completion of formalities of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was prepared and presented in the Court.

4. The case was committed to the Court of Sessions for trial by the learned Judicial Magistrate First Class, Bathinda vide order dated 03.05.2008. The accused-

appellant was charge sheeted for the offence punishable under Section 376 of IPC by the learned trial Court vide order dated 10.06.2008, to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as seven witnesses.

6. When examined under Section 313 Cr.P.C, accused pleaded that he is innocent. Puneet @ Punnu is the daughter of Sujan Singh, the brother of complainant Pritpal Singh. About 3-4 years prior to the occurrence, there was love affair between aforesaid Puneet @ Punnu and his son Vijay Kumar @ Mikki. Both the families had come to know about their love affair and they wanted to marry each other. But, complainant Pritpal Singh, the father of prosecutrix, his brother Sujan Singh and other family members did not agree to the said marriage proposal. They felt ill about the said love affair and were having grudge against their family since then. He did not commit any alleged rape or any other crime on the person of the prosecutrix as alleged. He has been falsely implicated in this case by the complainant after consultation with his brother Sujan Singh due to aforesaid grudge against their family.

7. In the defence evidence, accused-appellant examined HC Lachman Singh as DW-1, who has produced

the copy of the relevant entry of register no. 19 of Police Station Nehianwala as Ex.DF. Vijay Kumar @ Mikki, son of the appellant appeared as DW-2 and deposed about his love affair with Puneet @ Punnu, the daughter of Sujan Singh, the brother of the complainant. He also proved the photographs Ex.D-1 to Ex.D-3 of said Puneet @ Punnu and greetings Ex.DB to Ex.DF sent by Puneet @ Punnu to him. He also proved the envelopes Ex.DF/1 and Ex.DF/2. He has further supported the defence plea raised by the appellant with respect to his false implication.

8. Thereafter, the defence evidence was closed.

9. On appreciation of the evidence on record and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the appellant for the offence punishable under Section 376 of IPC and he was awarded the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. I have heard Ms. Saloni Sharma, Advocate, learned counsel for the appellant, Mr. Manjit Singh Naryal, learned Additional Advocate General, for the State of Punjab and have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that entire case of the prosecution is based on the statement of the prosecutrix. She has appeared in the witness box as PW-2 after six months of the occurrence. It is not expected that she will be remembering the minute details of the occurrence. She contended that the prosecutrix is a child witness. She was prone to the tutoring by her parents and family members. So, it is not safe to rely upon the testimony of the prosecutrix which appears to be tutored one. To support her contentions she relied upon cases **Samey Singh Vs. State 1998(3) R.C.R (Criminal) 369, Balwan Singh Vs. The State of Haryana 1994(2) R.C.R (Criminal) 359, Prahlad Singh Vs. State of Madhya Pradesh 1997(4) R.C.R (Criminal) 181.**

13. She further contended that the prosecution story is highly improbable. The prosecutrix has stated that after the occurrence she started playing with Kumkum, the grand-daughter of the appellant in their house. If this occurrence would had happened, it is not expected that the prosecutrix will stay in the house of appellant and will play with his grand-daughter.

14. She further contended that age of the victim is alleged to be six years at the time of the occurrence. She was medico legally examined by PW-5 Dr. Kiranjyoti Goyal,

but no injury has been found on any part of the body of the victim much less on the private parts. She further contended that if the appellant, a matured adult, would have indulged in the sexual act with the victim a girl of six years, there would have been serious injuries to her private parts. Even, no injury was found on the penis of the appellant, which also rules out the commission of the offence of rape. PW-1 Dr. Ravindra Singla, who has medico legally examined the appellant has categorically stated that he cannot give any opinion as to whether the appellant has committed any sexual intercourse within the last 24 hours. She has relied upon cases **Badshan Vs. State of Rajasthan 2014 (2) CriLR (Rajasthan) 628** and **Samey Singh's case (Supra)**.

15. She further contended that even as per the manner of occurrence stated by the prosecutrix, no offence of rape is made out. She has stated that she was made to lie her face downward in that position the sexual intercourse in the vagina is not possible.

16. She further contended that it is not possible that a person will commit this type of occurrence in his house when the gates of the house are lying open and house of the prosecutrix is also situated nearby. The prosecutrix has nowhere stated that she raised any hue and cry at the time

of the occurrence. These facts further renders the prosecution case doubtful.

17. She further contended that PW-3 Pritpal Singh, the father of the prosecutrix has contradicted the statements of the prosecutrix. She has stated that police had talked to the prosecutrix and had taken his signatures on the blank papers. So, he has disowned his statement Ex.PC. The prosecutrix as well as the complainant have given the improved versions, which renders their testimonies unreliable. The occurrence is alleged to have taken place in a residential locality. Various houses are situated adjoining to the house of the appellant, but no independent witness has been associated in the investigation.

18. She further contended that the statement of the prosecution has been recorded after about five days of the occurrence. There is no explanation for this delay in recording the statement, which further renders the prosecution case doubtful.

19. She further contended that report of the Chemical Examiner Ex.PK cannot be taken into consideration as the link evidence is missing. The constable, who has carried the parcels to the Chemical Examiner has admitted that the parcels were returned by the Chemical Examiner with some

objections. It shows that the parcels were tampered with.

20. She further contended that no DNA test has been got conducted by the Investigating Officer, which was the sure test. The Investigating officer has also not got compared the semen of the appellant with the vaginal swab. On that ground also the report of Chemical Examiner carries no evidentiary value.

21. She further contended that the prosecutrix is a child witness. It is always risky to rely upon the statement of a child witness. Various improvements have been made by the prosecutrix and her father in their testimonies. There is no independent corroboration to their testimonies and the medical evidence does not support the prosecution allegations. So, version of the prosecutrix does not inspire any confidence. To support her contentions she relied upon case **Sita Ram @ Kallu Vs. State of Haryana 2014 CriLJ 3062.**

22. She further contended that there is no evidence to establish the penetration of the penis in the private part of the prosecutrix, which was necessary to constitute the offence of rape. In the absence of that evidence, no offence of rape is made out. To support her contentions, she relied upon cases **Pandharinath Vs. State of Maharashtra 2009(3) R.C.R (Criminal) 596, Koppula Venkat Rao Vs.**

State of Andhra Pradesh 2004(2) R.C.R (Criminal) 189, Aman Kumar and anr. Vs. State of Haryana 2004(1) R.C.R (Criminal) 925 and Murugadoss Vs. State by Inspector of Police, All Women Police Station, Tindivanam 2014 (3) MLJ (Criminal) 10.

23. She further contended that it is a clear case of false implication. From the statement of DW-2 Vijay Kumar @ Mikki and the documents brought on record by him shows that Puneet @ Punnu, the niece of complainant was having love affair with said Vijay Kumar @ Mikki, the son of appellant. They wanted to marry each other, but that was not to the liking of the complainant and his brother. In order to teach them a lesson and to take the revenge, they in consultation with each other had concocted a false story and falsely implicated the appellant, who was 58 years of age at that time and was going to retire shortly. She contended that very strict punishment has been provided for this type of offence, which should have been proved strictly, but the prosecution has totally lacked in this regard. Thus, she contended that the conviction of appellant has been wrongly recorded by the learned trial Court.

24. On the other hand, learned State counsel contended that the prosecutrix has given the natural version of the occurrence. She was an intelligent and competent

witness. Her statement can be safely relied upon. Her statement is also corroborated from the testimonies of PW-3 Pritpal Singh-complainant and medical evidence. He further contended that in order to constitute the rape, it is not necessary that there should be full penetration. Even the slightest penetration of the male organ in the vagina will attract Section 376 of IPC. He further contended that the prosecutrix was a child of tender age and was not able to meticulously distinguished the body parts. The medical evidence shows that her vaginal parts were affected. It shows that the sexual intercourse was conducted by the appellant in the vagina. He further contended that the delay of few days in recording the statement of the prosecutrix on the part of the Investigating Officer is no ground to create any dent in the evidentiary value of her statement. He further contended that the defence plea raised by the accused with respect to his false implication has no substance as a girl of tender age cannot be made a tool to settle the scores by the parents. Thus, he contended that there is no infirmity in the conviction and sentence of the appellant as recorded by the learned trial Court.

25. I have duly considered the aforesaid contentions.

26. Ex.PE is the birth certificate of the prosecutrix, which shows that her date of birth is 23.03.2001. This

occurrence has taken place on 23.02.2008. So, at the time of the occurrence age of the prosecutrix was one month less than seven years. Certainly, she was a child witness. Learned Sessions Judge while recording her statement has put the general questions to her to test the competency of this witness. From the answers given by the prosecutrix, learned trial Court had come to the conclusion that she understands the sanctity of oath, duty to speak truth and she can narrate the facts correctly. So, she was found to be a competent witness and thereafter, she was examined on oath. The prosecutrix does not suffer from any intellectual in-capacity to understand the questions and given rational answers thereto. Mere from this fact that the prosecutrix is a girl of tender age and had deposed after about six months of the occurrence it cannot be concluded that she has forgotten everything and whatever she has deposed in the Court was only as a result of the tutoring by her parents. None of her parents was the witness to the occurrence. Only the prosecutrix being the victim was the witness to depose in what manner she was subjected to sexual assault by the appellant. While appearing in the witness box, the prosecutrix has categorically deposed that she has gone to see her friend Kumkum at noon. She cannot tell the time. Kumkum was not at home. Her Baba was at home. The

prosecutrix has identified the accused-appellant present in the Court as Baba. She stated that she does not know his name. She asked him where is Kumkum. He told her that Kumkum is not at home. She should sit here and wait as Kumkum will come soon. There a game was pending. She asked the accused what is that game. Accused told that that game belongs to Kumkum and she can play. Accused told her that he will do something to her from which she will get lot of enjoyment. While playing the game, she could not see the buttons and she repeatedly come out and accused will put her inside. Accused put her on bed and was trying to remove her Pajami (trouser). She further stated that she asked the accused that it will cause 'shame-shame', but the accused insisted that she should do it one time and get enjoyment. Accused removed her Pajami and opened zip of his pant. Accused put his private part in her part of toilet. Accused put her on bed with her face down and came over her and go upside and downside. He repeated this action many times. In the meantime Kumkum came there calling of '*Baba Ji-Baba Ji*'. Accused stopped the above act. Then, she along with Kumkum started playing on the roof. Thereafter, she deposed that she also narrated this fact to Kumkum, but she started laughing. She further deposed that she had stomach ache and told the incident to her

mother committed by the accused. Her mother further narrated the occurrence to her father. Her father called Baba and father of Kumkum at their resident and told that he should not do such act with his daughter in future. Then, her father took her to doctor. Thereafter, she had deposed about the fact that she was taken to the house of Kumkum by the police and about the recovery of the articles.

27. The prosecutrix, a girl of about 7 years of age, has given the natural version as to what had happened with her. Nothing more can be expected from such a witness. Mere this fact that she has been able to narrate the occurrence in detail is no ground to presume that she was a tutored witness. The Hon'ble Supreme Court in case **Acharapaarambath Pradeepan @ Anr. Vs. State of Kerela 2007(1) R.C.R (Criminal) 928** has laid down that a child indisputably is competent to testify if he understands the question(s) put to him and gives rational answer thereto. If after careful scrutiny of evidence of child witness the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of child witness. Again in case **Golla Yelugu Govindu Vs. State of Andhra Pradesh 2008(4) R.C.R (Criminal) 183**, the Hon'ble Apex Court reiterated the legal position that a

child of tender age can be allowed to testify if he has intellectual capacity to understand the questions and give rational answers thereto. In case **Gul Singh @ Guliya and others Vs. State of M.P and another 2014(4) R.C.R (Criminal) 829**, the evidence of the child witness was not only found reliable but not tutored and the conviction was based on the statement of the child witness.

28. In the instant case, learned counsel for the appellant has not been able to point out any instance which can show that the prosecutrix was tutored by her parents or the family members. The prosecutrix, a child of 7 years, was cross-examined at length by the learned defence counsel. Her cross-examination runs into about 5 typed pages. Learned defence counsel has put the pointed questions on all aspects of the case touching the manner of the occurrence. But, testimony of the prosecutrix could not be shattered in the cross-examination. If she would have only been tutored and not actually undergone this trauma, she would not have been able to face such a lengthy and pointed cross-examination. So, there is nothing to draw the conclusion that the prosecutrix (PW-2) was a tutored witness, rather she has given the natural version of the occurrence.

29. The testimony of the prosecutrix is also

corroborated from the statement of PW-3 Pritpal Singh, her father to whom the facts were narrated immediately after the occurrence as well as the medical evidence. So, there is absolutely no obstacle to rely upon the testimony of the prosecutrix which carries the great evidentiary value.

30. The prosecutrix has gone to the house of accused for playing with the grand-daughter of the accused, who was not present in the house at that time and she returned to the house after the occurrence. The prosecutrix is a child of tender age. She might not have been able to understand the seriousness of the act committed by appellant with her and might have taken the things lightly. So, she started playing with Kumkum, the grand-daughter of the appellant after the occurrence, the primary purpose for which she had come to the house of accused-appellant. She has even narrated that she told Kumkum that her grandfather had committed this act with her, but Kumkum started laughing. So, there is nothing unnatural in the conduct of the prosecutrix. She returned to her house and narrated the occurrence to her parents when she started feeling pain in the stomach.

31. It has been repeatedly held that absence of injuries on the person of victim as well as accused is no ground to discredit the victim of the sexual assault. In case

State of Himachal Pradesh Vs. Asha Ram 2006(1) R.C.R

(Criminal) 139, the Hon'ble Apex Court held that non-rupture of the hymen or absence of injury on victim's private parts does not belie her testimony. The Hon'ble Apex Court further held that even the opinion of the doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. In case **B.C. Deva @ Dyava Vs. State of Karanataka 2007(3) R.C.R (Criminal) 930** the Hon'ble Apex Court held that if no marks of injuries were found either on the person of the accused or the person of the prosecutrix, it does not lead to any interference that the accused has not committed forcible sexual intercourse on the prosecutrix when the prosecutrix had given the graphic narration of the occurrence. In case **Rajendra Datta Zarekar Vs. State of Goa 2008(1) R.C.R (Criminal) 229**, the rape was committed on a girl aged 6 years. Her hymen remained intact. The Hon'ble Apex Court held that the victim was very young. It is quite likely that full penetration did not take place as the accused was a grown up person of 20 years of age. In case State of **Himachal Pradesh Vs. Gian Chand 2001(2) R.C.R (Criminal) 666**, the rape was committed on a child. No external injury was found on the person of accused who was grown up. The Hon'ble Apex Court held that in case of a child victim being ravished by a grown up

person it is not necessary that there should always be marks of injuries on the penis in such cases. Absence of injuries on the person of accused is not fatal to the prosecution. This authority is fully applicable to the facts of the case and a complete answer to the plea raised by learned counsel for the appellant. In view of the consistent ratio of law laid down in the cases referred above, the absence of injuries on the person of the prosecutrix and accused is no ground to discard the prosecution version. Moreover, in the instant case, the statement of PW-5 Dr. Kiranjyoti Goyal, who has medico legally examined the prosecutrix, clearly establishes that the prosecution was subjected to the sexual assault and her private parts were badly affected. She has stated that separation of labia was painful. Hymen was absent. In the perianal area there was redness of gluteal area with superficial tear of perianal skin. The separation of gluteal folds was painful. All these symptoms clearly indicates that she was subjected to sexual act.

32. From the medical evidence, it is established that it is not a case where the prosecutrix was subjected to anal intercourse. As per the statement of PW-5 Dr. Kiranjyoti Goyal, the anal sphincter were found totally closed. So, no injury of any type was found on the anal area of the

prosecutrix. Rather, her vaginal region was affected as the separation of labia was painful in the perianal area and there was redness on gluteal area with superficial tear of perianal skin and separation of gluteal folds were painful, which clearly shows that vaginal area of the prosecutrix was subjected to the sexual act.

33. Mere this fact that prosecutrix has stated that she was made to lie with her face down on the bed is no ground to conclude that the vaginal sex was not possible in that posture. The prosecutrix was a girl of tender age of 7 years. Moreover, it is not a case of complete/ full penetration of penis. Some penetration of penis in the vagina is possible even in this posture as stated by the prosecutrix. The absence of injuries on the penis of accused-appellant also shows that he has not indulged in the complete penetration.

34. I do not find any serious contradiction in the statements of the prosecutrix and PW-3 Pritpal Singh-complainant, her father. PW-3 Pritpal Singh has not been subjected to further cross-examination as to on what blank papers his signatures were obtained by the police. In his statement, he has categorically deposed that he along with his brother and wife went to the hospital. Police came to the hospital and recorded his statement Ex.PC, which was read over to him and after admitting the same to be correct he

signed the same. So, there is no question of disowning of the statement Ex.PC by the complainant.

35. It is immaterial as to whether the prosecutrix has first narrated the version to her mother or father as this deviation does not go to the root of the occurrence. It only relates to the post occurrence aspect. The prosecutrix in her statement has given some more details to elaborate her version, which are not inconsistent with the original story of the prosecution. The undue importance should not be attached to such discrepancies or improvements which do not go to heart of the matter and shake the basic version of the of the prosecution witness. This Court in case **Dhyan Singh Vs. State of Punjab 2006(3) R.C.R (Criminal) 493** has laid down that while making the statement before the police, the witness did not make a detailed statement, which he later on made while appearing in the Court. In fact these cannot be technically termed as improvements, but are minor omissions, which were made by the witness while making statement before the police. The Hon'ble Supreme Court in case **Acharapaarambath Pradeepan's case (Supra)** has also laid down that some improvements in the testimony of a witness would not lead to rejection thereof in its entirety. So, the supply of some more details by the prosecutrix and the complainant while deposing in the

Court do not shake the basic version of the prosecution and is no ground to render their testimonies unworthy of credence.

36. As per the prosecution story, the accused-appellant alone was present at his house at the time of occurrence. His family members were not present. He must be knowing the purpose of their visit and the expected time of their return. In these circumstances, if the doors of the house were opened at the time of the occurrence that is also no ground to create any dent in the credibility of the testimony of the prosecutrix. She was a child of tender age and it is not expected from the child of such age that she will put resistance or raise alarm in that situation.

37. I do not find any substance in the plea raised by learned counsel for the appellant that link evidence was missing. PW-7 HC Nachhattar Singh had carried the parcels to the Chemical Examiner. In the cross-examination, he has stated that some objections were noted down by the Chemical Examiner on the road certificate. But, he does not know as to what were those objections made by the office of Chemical Examiner. He further deposed that he deposited back the parcels with AMHC Basant Singh (PW-4). Said Basant Singh has stepped into the witness box as PW-4 and filed his affidavit EX.PI. He was not at all cross-examined by

the learned defence counsel in spite of the opportunity granted by the learned trial Court. So, his affidavit Ex.PI has gone unchallenged. Any omission therein with respect to the removal of objections and the nature of objections is of no consequence. The report of Chemical Examiner Ex.PK also shows that the seals on the parcels were intact. So, there is no question of tampering with the parcels sent to the Chemical Examiner by PW-5 Dr. Kiranjyoti Goyal through the police.

38. The report Chemical Examiner Ex.PK shows that the Spermatozoa was detected in the vaginal swab of the prosecutrix which further corroborates the prosecution version that she was subjected to sexual intercourse. No doubt, the Investigating Officer has not taken the sample of the semen of the appellant to get it compared with the Spermatozoa found in the vaginal swab. But, this lapse on the part of Investigating Officer cannot result in any benefit to the appellant in view of the peculiar circumstances of the case. The prosecutrix was medico legally examined by PW-5 Dr. Kiranjyoti Goyal on the same day and her vaginal swab was taken at that very time. The prosecutrix is a girl of tender age and there is no question of her having any other sexual encounter except as stated by her. So, the presence of Spermatozoa in the vaginal swab of the prosecutrix

further corroborates her testimony that she was subjected to the sexual intercourse. No DNA test has been got conducted by the Investigating Officer which is again a lapse on his part. In case **State of Punjab Vs. Mohinder Singh 2008(3) R.C.R (Criminal) 226**, the blood of the deceased was available on incriminating articles. which was not sent for group determination and DNA testing. The Division Bench of this Court held that prosecution case cannot be discarded in view of the eye witnesses account which have established the prosecution case beyond shadow of reasonable doubt. Thus, mere this fact that the Investigating Officer has not got conducted the DNA test is only a lapse on his part and the benefit thereof cannot be given to the appellant as the case of the prosecution is based on the cogent, convincing and reliable testimony of the prosecutrix, the victim of the offence which is further corroborated from the testimony of her father PW-3 Pritpal Singh, medical and scientific evidence.

39. The statement of the prosecutrix has been recorded by the Investigating Officer on 28.02.2008 under Section 161 Cr.P.C. No doubt, he has committed delay in recording her statement. As we have seen above, the Investigating Officer of the case has committed various omissions and lapses in the investigation of the case. This is

again a lapse on his part. The lapses or defect in the investigation cannot lead to the conclusion that the accused is innocent, reliance can be placed on case **Acharapaarambath Pradeepan and another case (Supra)**.

The delay in recording the statement of prosecutrix by the Investigating Officer under Section 161 Cr.P.C is also no ground to discard the prosecution case. To support this view reference can be made to case **State of U.P Vs. Satish 2005 CriLJ 1428**.

40. In order to constitute the commission of rape, it is not necessary that there should be the complete and full penetration. Even, the slightest penetration will constitute the offence of rape. Reference can be made to cases **Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand) 2006(4) R.C.R (Criminal) 603** and **Aman Kumar's case (Supra)**. The statement of the prosecutrix and the medical evidence clearly indicates that there was penetration of the male organ of the appellant in the female organ of the prosecutrix. It may not be complete penetration, but this act of the appellant clearly attracts Section 376 of IPC.

41. I do not find any substance in the plea raised by learned defence counsel that it is a case of false implication. The reason for the false implication is stated to be the alleged love affair between Puneet @ Punnu, the niece of

PW-3 Pritpal Singh and Vijay Kumar @ Mikki, the son of appellant. Vijay Kumar @ Mikki, the son of appellant has stepped into the witness box as DW-2 and has deposed with respect to his love affair with Puneet @ Punnu. He also proved the photographs EX.D-1 to Ex.D-3, the greetings cards Ex.DB to Ex.DF and envelopes Ex.DF/1 and EX.DF/2 which are alleged to have been sent to him by said Puneet @ Punnu. The greetings card/ letters Ex.DB, Ex.DC, Ex.DD, Ex.DE do not bear any date. The envelope Ex.DF/1 bears the date in the stamp of the post office, which is 17.02.1999 i.e. 9 years prior to this occurrence. DW-2 has also stated that he had come to know that said Puneet @ Punnu is residing at Mohali and she has got married through Court with a boy of Goniana Mandi. The alleged love affair was a stale matter much prior to this occurrence. Said girl had already married and settled at Mohali. The prosecution witnesses have been suggested that the appellant had took the prosecutrix in her lap and he forcibly pressed her and made love with her and she felt pain. In the cross-examination the prosecutrix has further stated that the mother of Kumkum namely Pinki loves her very much and she also used to love her. It shows that both the families were on visiting terms and there was no dispute between them.

42. The old love affair between the cousin of the prosecutrix and the son of appellant cannot be a ground for the false implication of the appellant. In that case the target would have been DW-2 Vijay Kumar @ Mikki himself and not his father i.e. the present appellant. It is not believable that a girl of tender age shall be used as a tool by her parents and other family members to settle their score unmindful of the disrepute she would have to suffer in the public with such a stigma for the rest of her life. The parents and the family members of such an innocent and tender age girls cannot be so cruel to put her honour at stake just to take revenge of some old stale matter from the appellant. In case **Parkash Vs. State of Haryana 2004(1) RCR (Criminal) 109**, a minor girl of 5 ½ years was kidnapped. The plea of false implication was due to some litigation with the father of victim. The Hon'ble Apex Court held that it is highly improbable that for making false implication a child of 5 ½ years would be used as a pawn. Same legal position has been reiterated by the Hon'ble Apex Court in cases **Jaswant Singh and others Vs. State of Punjab 2010(1) R.C.R (Criminal) 117**, **Puran Chand Vs. State of H.P 2014(2) R.C.R (Criminal) 727** and **Swaroop Singh Vs. State of M.P 2013(2) R.C.R (Criminal) 926**. Thus, the defence plea of false implication raised by the appellant

carries no substance.

43. Learned counsel for the appellant further contended that appellant is a senior citizen. He was 59 years of age when the case was decided by the learned trial Court. He is also suffering from the heart disease and various other ailments. Even, during the period of interim bail, he remained admitted in the hospital from 04.06.2015 to 09.06.2015. He has already undergone total 8 years 3 months and 2 days as on 04.09.2015 including remission, which is a quite long period. So, his sentence should be reduced to the period already undergone by him in jail.

44. I have duly considered the aforesaid contentions.

45. The age of the appellant has been mentioned as 59 years in the impugned judgment dated 08.05.2009. No doubt, in this way his age comes to be more than 65 years. But, the appellant has been convicted for a serious offence of rape. He has ravished the prosecutrix, a girl less than 7 years of age. Even, at the time of occurrence his age might be 58 years. The offence committed by him attracts Section 376 (2) (f) IPC, which carries the minimum sentence for 10 years, which may also be for life. The trial Court has already granted the minimum sentence i.e. rigorous imprisonment for 10 years to the appellant. So, there is no reason to reduce the sentence of the appellant less than the minimum

provided for the offence in the IPC.

46. Thus, keeping in view my aforesaid discussion, the prosecutrix, though a child witness, has narrated the natural version of the occurrence. There is absolutely no material on record to show that she was a tutored witness. Her statement is cogent, convincing and reliable which is further corroborated from the testimony of her father, medical and the scientific evidence. The aforesaid clinching evidence establishes beyond shadow of reasonable doubt that the appellant has committed rape upon the prosecutrix a girl of below 7 years of age. So, I do not find any legal infirmity in the conviction of appellant as recorded by the learned trial Court and sentence awarded to him, which are hereby affirmed and maintained.

47. Consequently, the present appeal has no merits and the same is hereby dismissed.

September 17, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**