

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

Date of Decision: 23rd February, 2015

+CRL.A. 881/2012

RUNCHE DAMAI alias BHIM BAHADUR Appellant

**Through: Mr.Vivek Sood with Mr.Rakesh
Sharma, Mr.Prem Prakash and
Mr.S.Kukreja, Advs.**

versus

STATE Respondent

Through: Mr.O.P.Saxena, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. **Who is a father?** A father is an essential component of the family, which, in turn, has been acknowledged as one of the most important units of society, in relation to the wellbeing and especially the nurturing and protection of children. We should never lose sight of the fact that a father derives his position and power from cultural prescriptions of manhood. Being a man and a father meant being able to exercise self-restraint. This entailed, among other things, not resorting to violence especially against women. Abusing women is

regarded as a cowardly act and men who engaged in such practices should be excluded socially.

In the words of Sigmund Freud, “*I cannot think of any need in childhood as strong as the need for a father's protection.*” These words of Sigmund Freud clearly show that fatherhood is a socio moral process. It is intertwined with position and role of a father in society. But in the instant case all these parameters of a fatherhood have been violated by a father when he committed abominable act of rape upon his own daughter and defiled her body for a small fling of lust.

2. ‘X’ was residing along with her parents, brothers and sisters at A-2/57 Dharampura Extension, Nazafgarh, New Delhi. Her mother PW5-Maya Devi was working as a house maid while her father, i.e., the accused used to work at some meat shop. On 5th October, 2010, ‘X’ was alone at home with her father when he committed the appalling act of rape upon his own daughter. When Maya returned home, she found ‘X’ sweating and crying. She was informed by ‘X’ about the commission of rape upon her. Accused was not at home at that time, as such, Maya informed wife of the landlord. On 7th October, 2010, when the accused returned home, PW4-Smt. Anuradha Sharma, President of Residents Welfare Association was called and

informed about the heinous act committed by the accused. Accordingly, she informed the police at 100 number on which police machinery swung into action. PW8-Constable Kuldeep along with SI Surender Huda went to House No.57, A2 block, Dharampura Extn. where statement of Maya Ex.PW5/A was recorded on the basis of which FIR Ex.PW7/A u/s 376 IPC was registered. 'X' was taken to DDU Hospital along with her mother by PW2-WCT Rajbala for her medical examination. MLC of 'X', Ex.PW1/A was prepared by PW1-Dr. Dipali and she referred the patient to the department of Gynae for further examination. Further medical examination of 'X' was conducted by PW15-Dr.Varuni who gave her report Ex.PW15/A. Accused was arrested. He was also taken for his medical examination and was examined by PW3-Dr. Alok Kumar. He prepared his MLC Ex.PW3/A and opined that there was nothing to suggest that accused cannot perform sexual act. During the course of investigation, the exhibits were sent to FSL.

3. After completing investigation, charge sheet was submitted against the accused. On charge u/s 376 IPC being framed against the accused he abjured his guilt and claimed trial.

4. In order to substantiate its case, prosecution examined 13 witnesses. All the incriminating evidence was put to the accused while recording his statement u/s 313 Cr.P.C. wherein he denied the case of prosecution. According to him, he was falsely implicated in this case at the instance of his wife with whom he was not having cordial relations as she was having illicit relations with someone at her work place. She had threatened to kill him and to get him falsely implicated in some heinous case. He examined DW1-Sunil, his son in support of his defence.

5. After evaluating the evidence adduced by the prosecution and hearing learned counsel for the parties, vide impugned judgment dated 20th January, 2012, the accused was held guilty and convicted for offence u/s 376 IPC and vide order dated 24th January, 2012 he was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- in default of payment of fine, to undergo simple imprisonment for six months. The fine, if realized, was to be released to the victim as compensation.

6. Feeling aggrieved, present appeal has been preferred by the accused.

7. Assailing the findings of learned Trial Court, it was submitted by Sh. Vivek Sood, Advocate for the appellant that the prosecution case hinges on the testimony of prosecutrix who was only 5 years old at the time of alleged incident. Possibility of tutoring the prosecutrix cannot be ruled out, inasmuch as, she was produced before Sh. Sumit Das, learned Metropolitan Magistrate for recording her statement u/s 164 Cr.P.C. However, as per his testimony and the proceedings Ex.PW10/B despite repeated questioning, the prosecutrix did not respond to the questions and kept mum. As such, the proceedings were sent to the Additional Chief Metropolitan Magistrate for getting the statement of prosecutrix recorded by a lady judicial officer so that prosecutrix may be at more ease and can interact with her. However, things did not improve and she was produced before Ms. Meenu Kaushik, Metropolitan Magistrate and despite her efforts, the child did not respond and, therefore, her statement could not be recorded. Learned counsel further urged that even when the prosecutrix was called in the witness box to record her statement on 28th February, 2011, she remained silent and, as such, the matter was adjourned. It was only thereafter that on 16th May, 2011, her statement was recorded and she admitted that her mother had told her about the

statement, as such, possibility of tutoring cannot be ruled out. It was further submitted that as per the MLC, the patient was conscious and oriented and, therefore, why did the prosecutrix not narrate the incident to the Metropolitan Magistrate. Furthermore, although as per the version of her mother, she was informed about the incident by the child on the same day but neither she reported the matter to the police nor took the prosecutrix to hospital for examination. No scientific evidence has come as the clothes were handed over to the police by the mother of the prosecutrix, as per her version, after two months of the incident when the same were duly washed. Moreover, the accused was not absconding, inasmuch as, it has come on record that accused used to return home after a gap of 7-10 days. DW1-Sunil has also deposed that there used to be quarrels between the accused and his wife. Under the circumstances, it was submitted that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt and, as such, the accused is entitled to be acquitted.

8. Wife of the accused was present in the Court during the hearing of arguments and it was submitted by the counsel for the accused that she admits that she got the accused falsely implicated in this case due

to frequent quarrels between the two. It was further submitted that she will file her affidavit in this regard.

9. Per contra, it was submitted by the learned Additional Public Prosecutor for the State that entire evidence was duly scrutinized by the learned Trial Court in right perspective. Testimony of the prosecutrix finds corroboration not only from her own mother to whom she had narrated the incident immediately after the occurrence but their ocular version find corroboration from the son of the landlady as well as the president of the residents welfare association. Furthermore, the medical evidence completely supports the testimony of the prosecutrix. Moreover, even if there was some quarrel between the husband and wife, the wife would not put the honour of her own daughter at stake for that petty reason in order to falsely implicate her husband. As such, it was submitted that the impugned order does not suffer from any infirmity which calls for interference. As such, the appeal is liable to be dismissed.

10. Testimonial potency of version of a victim of rape cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a

competent witness under section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must be attached in evaluation of her evidence as in the case of an injured complainant or a witness. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act, which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for corroboration required in the case of an accomplice. The nature of evidence required in to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. If the totality of the circumstances appearing on record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. Law to this effect was laid by the Apex Court in *State of Maharashtra vs. Chandraprakash*

Kewal Chand Jain, 1990 (1) SCC 550; ***State of Punjab vs. Gurmeet Singh***, 1996 (2) SCC 384; ***Rajoo and Ors. vs. State of M.P.***, 2009 I AD (S.C.); ***S. Ramakrishna vs. The State***, 2008 (11) JT 635; ***Om Prakash vs. State of U.P.***, AIR 2006 SC 2214.

11. The victim in the instant case is a child aged about 5 years and the question for consideration, therefore, is whether a conviction can be recorded on the testimony of a child witness or not. This question arose before this Court in Crl. Appeal No. 244/2011, ***Mithu Rai vs. State*** and it was observed as under:-

12. The conviction on the sole evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of evidence is convinced about the quality and reliability of the same. It should be accepted albeit with circumspection.

13. A common sense approach was advocated by the Court in the early case of ***Mohamed Sugul Esa v. The King***, AIR (33) 1946 PC3, where it was observed:

"Once there is admissible evidence a court can act upon it; corroboration, unless required by a statute, goes only to the weight and value of the evidence. It is a sound rule not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

14. Later in ***Rameshwar Kalyan Singh v. State of Rajasthan***, AIR 1952 SC 54, the Court held:

"The rule, which according to cases has hardened into one of law, is not that corroboration is essential before there can be a conviction, but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be

understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

15. This issue was also dealt by the Apex Court in **Virendra@ Buddhu & Anr v. State of UP**, (2008) 16 SCC 582. Relevant paras are 18 to 21 and the same are reproduced as under:-

"18. The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that

"118. Who may testify- All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind".

19. A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

20. In **Dattu Ramrao Sakhare v. State of Maharashtra**, (1997) 5 SCC 341 it was held as follows: (SCC p. 343, para 5)

"5. ...A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

21. Subsequently, in the case of **Ratansinh Dalsukhbhai Nayak v.State of Gujarat**, 2004 Cri LJ 19 wherein one of us (Dr. Arijit Pasayat) was a member the bench held that:

“the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.”

12. The legal position which can be culled out from the aforesaid decisions is that before recording conviction on the solitary testimony of a child witness, i.e., prosecutrix herein, the Court has to ensure that she is a reliable witness. If her testimony is found to be trustworthy and reliable then conviction can be recorded on her sole testimony.

13. Reverting to the case in hand, since the prosecutrix was only aged about 5 years, as such, learned Additional Sessions Judge put various questions to her in order to ascertain her capacity to understand the questions and to give coherent answers. After satisfying herself, her statement was recorded without oath. She stated before the Court that one day when her mother had gone for work and her brother Govind had also gone to school, she and her father were at home. Her father removed her panty and committed rape on her. She felt pain and cried.

14. Submission of learned counsel for the appellant that the possibility of tutoring the witness cannot be ruled out in view of her previous conduct when despite the fact that she was produced before two Metropolitan Magistrates for recording her statement u/s 164 Cr.P.C. she did not respond to the questions and even when she was brought before the court for recording her statement on the first date, she did not answer the question and it was only on the subsequent date that she deposed before the court, has no substance. Rather it reflects that prosecutrix was traumatized to the extent that she was unable to record her statement u/s 164 Cr.P.C. as deposed by the learned Metropolitan Magistrate and even she could not depose on the first date. In that scenario if she did not give the statement before the learned Metropolitan Magistrate or in the first instance before the Court, it cannot be presumed that her deposition in the Court on the second day was a result of tutoring. Moreover, in pursuance to the Court question as to whether her mother told her to give this statement or her father actually did the act, the witness replied that “*papa did it*”. Despite cross-examination, nothing material could be elicited to discredit her statement.

15. In ***Radhu vs. State of Madhya Pradesh***, (2007) 12 SCC 57, Hon'ble Apex Court observed that it is unlikely that child of eight or nine years of age can even be tutored to make allegations of rape by a person otherwise well known to her and then repeat those allegations before police, magistrate, doctor and then during trial.

16. Moreover, it has come in the statement of PW5-Smt. Maya Devi, mother of prosecutrix that on the fateful day when she returned home at about 6:00-7:00 pm from her work, she found her daughter crying out of pain and, on inquiry, she was informed by the prosecutrix that accused committed rape upon her, and when the daughter of tenant came, accused fled away. The factum of making the complaint and the terms thereof becomes relevant as subsequent conduct u/s 157 r/w Section 8 of the Indian Evidence Act.

17. In ***Emperor vs. Phagunia Bhuran***, AIR 1926 Pat. 58, it was observed as under:-

"If the girl went to her relatives straight after the occurrence and complained on her own initiative, there is no doubt that her conduct would have a direct bearing upon and connection with the occurrence itself".

18. In ***Rameshwar Kalyan Singh*** (supra) also, it was observed that where the raped girl instinctively ran home to her mother, but not finding her there, she went to sleep and when the mother returned four

hours later, the girl told her what had happened, the statement made to the mother fell within the ambit of Section 157 read with Section 8 illustration (J) of the Evidence Act.

19. ***Nagam Gangadhar vs. State***, 1998 CrL. L.J. 2220 considered the similar situation, where a child of four years was raped. Hon'ble Apex Court observed as under:-

"It is then contented that PW3 is a child witness and no importance can be attached to that evidence. It is true that the evidence of PW3 cannot be given the same weight as a grown up victim in a case of rape, the reason being that she is aged four years at the time of occurrence. However, she appears to have communicated to her parents that the revision petitioner has committed an act due to which she was getting pain in her private part. PW-1 as well as PW-2 have sworn to the fact that PW-3 disclosed the said act, even if the testimony of PW-3 is to be ignored, the circumstances set out supra are, in view of Hon'ble Apex Court, sufficient to bring home the guilt of the revision-petitioner."

20. In ***Syed Pasha vs. State of Karnataka***, 2004 Cr. L.J. 4123 also the child informed her mother about the incident and the person, who had committed rape upon her. It was held this information was admissible in evidence and it points out to the guilt of the accused.

21. Similar view was taken by this Court in, ***Nannu Gupta @ Bablu v. State***, 2010 II AD (Delhi) 117 and in ***Hari Om v. State*** 2010 Cr.L.J.1281, where it was held that previous statement of prosecutrix are admissible in evidence under Section 157 of the Evidence Act and this proposition of law was recognized by Hon'ble Apex Court in

Madan Lal vs. State of J&K, AIR 1998 SC 386, where statement made by the prosecutrix to her mother soon after the incident was accepted to be corroborative piece of evidence.

22. Applying the ratio of the aforesaid cases to the evidence of PW5-Smt. Maya Devi, there is no hesitation to arrive at the conclusion that her statement indicating that the prosecutrix told her immediately after the incident that she was subjected to rape by accused is admissible under Section 8 of the Evidence Act.

23. As per the version of Smt. Maya Devi, she informed about the commission of rape by the accused to the wife of her landlord. On 7th October, 2010, when the accused returned back to the house, she called wife of the landlord who caught hold of the accused and informed the police. Police came and the accused was handed over to the police. Her testimony in this regard finds corroboration from PW9-Jitender who is the son of the landlady in whose house the accused along with his family was residing. This witness has also deposed that on 5th October, 2010, when he returned from his office, mother of the prosecutrix was talking to his mother and was weeping at that time. She had told his mother that her husband i.e. accused had committed rape upon her daughter X. She had further told that

accused had run away from the room after the incident. On 7th October, 2010 when he returned from his office in the evening, he was informed by the wife of the accused that accused had returned home and had been handed over to the police. Police was called by PW4-Mrs. Anuradha Sharma, President of the Residents Welfare Association. She has corroborated their version by deposing that on 7th October, 2010 at about 8:30 pm, she was called at the house of Smt. Maya Devi and was informed by her that her husband raped her five years old daughter. She talked to the prosecutrix and she also confirmed this fact. She checked her private part which seems to be having a cut and some bleeding. She immediately informed the police at 100 number. Both PWs Jitender and Anuradha Sharma are independent witnesses and have *no axe to grind* to falsely implicate the accused in such a heinous crime.

24. Further the ocular testimony of these witnesses find corroboration from the medical evidence which reflect that the victim was taken to DDU Hospital where after preparing her MLC Ex.PW1/A by Dr. Dipali she was referred to the Department of Gynae for further examination. PW15-Dr. Varuni, OBS and Gynae Department, DDU Hospital, Delhi examined the patient who was

brought to the hospital for medical examination with “*alleged history of sexual assault by the father*”. On examination, she found her hymen to be torn and patient was advised admission for examination under anaesthesia. On examination under anaesthesia, vault found healthy, first degree perineal tear present, no other active laceration or bleeding was seen. Superficial erythema on labia majora was present. Perineal tear was repaired with chromic catgut no.1. In cross-examination, she further deposed that on the basis of examination, she can say that the patient was sexually assaulted recently, i.e., upto 48 hours before the examination. The incident had taken place on 5th October, 2010 and Gynae examination was done on 8th October, 2010. Under the circumstances, the factum of hymen being torn, presence of first degree perineal tear which had to be repaired coupled with the observation of the doctor that the patient was sexually assaulted recently is further strong corroborative piece of evidence to the ocular testimony of the prosecution witnesses.

25. Although the scientific evidence did not yield any fruitful result but that is precisely for the reason that the prosecutrix was medically examined after three days of the incident and her clothes were washed. Therefore, there was no possibility of detection of any

semen or blood but that at best is only a corroborative piece of evidence and does not cast any dent on the prosecution version.

26. Coming to the plea of the accused that he was falsely implicated in this case at the instance of his wife with whom he was having strained relations as she was having illicit relations with some person at her workplace, the same does not inspire confidence as PW5-Maya Devi has categorically denied the suggestion that she was having illicit relation with anybody. Moreover, DW1-Sunil was examined by the accused to prove that relation between the accused and his wife were not very cordial. However, even this witness does not improve the case of accused, inasmuch as, he has merely deposed that there used to be some dispute between his father and mother for the last 2-3 years. However, in cross-examination, he admitted that no report was lodged anywhere regarding disputes between his parents. He used to come to know about the quarrel and the 'cause of quarrel'. He admitted that there used to be only minor disputes between his parents once or twice in 4-6 months and no physical force was ever used by either side. These minor disputes that too once or twice in 4-6 months are natural wear and tear in anybody's married life. Moreover, although according to this witness he used to come to

know about the cause of quarrel also but he does not say that the cause of quarrel was regarding his mother having illicit relation with someone else. Rather he admitted that his mother wanted to live with his father and never wanted to send him out of the house. Furthermore, from the testimony of this witness, presence of the accused at his house on the relevant day also stands proved as he deposed that on the date of incident, he was at home up till 4:00 pm and thereafter he had gone to watch Commonwealth Games. He specifically deposed that his father, i.e., the accused was at home when he left for Commonwealth Games. When he returned at about 10:00 pm, his father was not at home and he returned after 2-3 days. Under the circumstances, firstly it is not proved that the mother of the prosecutrix was having illicit relation with some other person even otherwise it has no bearing on the present case. Moreover, on petty quarrels, it is unlikely that the mother would level such false allegations against her own husband by putting the honour of her own daughter at stake.

27. The delay in reporting the matter to the police may be due to the fact that the prosecutrix and her mother belonged to lower strata of society as it has come on record that she was working as a maid

servant. However, she had informed about the incident to the land lady. Moreover, after the incident, the accused had left the house and returned only on 7th October, 2010. Immediately thereafter she informed the landlady and the President of the Welfare Association who then informed the police and then the police machinery was set in motion. Moreover, Hon'ble Supreme Court in ***Bharwada Bhoqinhai Hirjibhai vs. State of Gujrat***, 1983 (2) Recent Criminal Report 192, had noticed peculiar conditions and circumstances in which a girl or woman, who happens to be victim of rape, in Indian conditions would find herself and so will be reluctant to disclose such incident to anyone and it is observed as under :

“Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or woman in India make false allegations of sexual assault... The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because : (1) A girl or a woman in the tradition bound nonpermissible Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down upon by the society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost invariably result in mental torture suffering to herself. (7) The fear of being taunted by others will

always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame and account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not want to avoid publicity on account of fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross examination by counsel for the culprit, and the risk of being disbelieved, act as deterrent”.

28. In this regard observations made by Hon'ble High Court in

Hari Om (supra) may be reproduced with advantage:-

“Prosecutrix being a young girl aged about 7 years at the time of incident, it is not likely that her parents would have implicated the accused in a false case of rape of their daughter, conscious as they would be that reporting of such a matter to police, particularly, when parents of prosecutrix as well as the accused were living in the jhuggies situated in the same locality, was bound to expose their daughter to scrutiny and questions not only by the police and the Court, but also by their neighbour and relatives. They could not have been ignorant of the fact that they may even have difficulty in finding a suitable match for their daughter once it is known that she has been subjected to rape in her childhood. Therefore, if they, despite realising these consequences do report the matter to police, it would be only if what they were reporting was absolutely true and correct. In fact, some of the parents even refrain from reporting such incident lest their child not face embarrassment on account of incident becoming public and her marriage being jeopardised on account of prospective in laws becoming aware of the incident, at the time of her marriage. The parents of prosecutrix knew that if they report the matter to the police, they will have to take their child first to police station, then to the hospital and ultimately in the Court, and the child will be made to repeat the worst incident of her life at every place at considerable discomfort and embarrassment to her. Therefore, unless the incident of this nature actually happened with their child, no parents would take such step”.

29. In view of these authoritative pronouncements, coupled with the fact that accused is none else but the real father of prosecutrix, there is absolutely no reason for her to falsely implicate him in such a serious and heinous case.

30. The submission of learned counsel for the appellant during the course of argument that the mother of the prosecutrix has levelled false allegations against her husband and she was ready to file an affidavit to this effect, although, no such affidavit has been filed even otherwise, it is a matter of record that Smt. Maya has seven children. The accused is now lodged in jail to serve the sentence awarded to him and his wife may be finding it difficult to maintain such a large family out of her meagre income and that may have prompted her to come to the Court to say that her husband was innocent so that he may be set free. Had there been any iota of truth in this submission, nothing prevented her to bring this fact to the notice of the Court right from 2011 when the trial was going on. It is only after the conviction of the accused and when this appeal was being heard that such a submission was made during the course of arguments, which to my mind has no ring of truth.

31. That being so, the impugned judgment convicting the appellant u/s 376 IPC does not suffer from any infirmity which calls for interference.

32. Even as regards quantum of sentence, there is no warrant for interference as an act of rape is a gruesome and abhorring act. But when this act is committed by a father upon his own daughter, then it leaves a permanent scar on the personality of the child, inhibiting growth and development. It instils the feeling of fear, insecurity and a brooding sense of shame and guilt for no fault of the victim. The gruesome act committed by the convict has not only defiled the body of the prosecutrix but also put an indelible mark on her person which shall haunt throughout her life that she is a victim of rape committed upon her person by her own father, as such the convict does not deserve any leniency in punishment. Moreover Hon'ble Supreme Court in *Madan Gopal Kakkad vs. Naval Dubey & Anr.*, (1992) 3 SCC 204 pointed out with deep concern that though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey

for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms.

33. The learned Additional Sessions Judge has awarded the sentence of 10 years which is the minimum sentence prescribed u/s 376 2 (f), as such, there was no discretion vested in the Court to impose a lesser sentence which the facts and circumstances of the case even otherwise did not warrant.

34. Under the circumstances, the appeal being bereft of merit, is dismissed. Trial Court record along with copy of the judgment be sent back.

Accused/appellant be informed through Superintendent Jail.

**(SUNITA GUPTA)
JUDGE**

February 23, 2015

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