

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 31.05.2017

Judgment Pronounced On: 01.09.2017

CRL.A. 1509/2014

RAVINDER SINGH

...Appellant

**Through: Mr. Manoj Sharma, Ms.
Manoranjani, Advocates**

versus

STATE

... Respondent

**Through: Mr. Ravi Nayak, APP for
State with SHO Raj Kumar, P.S.
BHD Nagar.**

CORAM:

HON'BLE MR. JUSTICE SIDDHARTHMRIDUL

HON'BLE MS. JUSTICE MUKTA GUPTA

J U D G M E N T

SIDDHARTHMRIDUL, J.

1. The present appeal instituted under the provisions of section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') assails the judgment dated 18.02.2013 and the order on sentence dated 23.02.2013, rendered by the Ld. Additional Sessions Judge (Special

Fast Track Court), Dwarka Courts, New Delhi, in Sessions Case No. 01/13, in FIR No. 211/2012, registered at P.S. Baba Hari Dass Nagar.

2. By way of the impugned judgment dated 18.02.2013, the appellant has been convicted for the commission of offences punishable under the provisions of sections 376, 377 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). By way of the impugned order on sentence dated 23.02.2013, the appellant has been sentenced to undergo imprisonment for life, alongwith a payment of fine of Rs.25,000/-, for the offence punishable under the provision of section 376, IPC. In default of the payment of fine, the appellant has been sentenced to undergo simple imprisonment for a period of six months. Further, for the offence punishable under the provision of section 377, IPC, the appellant has been sentenced to undergo imprisonment for life, alongwith the payment of fine of Rs.25,000/-. In default of the payment of fine, the appellant has been sentenced to undergo simple imprisonment for a period of six months. Furthermore, for the offence punishable under the provision of section 506, IPC, the appellant has been sentenced to undergo rigorous imprisonment for 02 years, alongwith the payment of fine of Rs.10,000/-. In default of the payment of fine, the appellant has been sentenced to undergo simple imprisonment for a period of three months. All the sentences have been directed to run concurrently. The appellant has been granted the benefit of

section 428 of the CrPC; with a stipulation that the appellant shall not be given any clemency by the State before he spends atleast 20 years in jail.

3. The gravamen of the charge, for which the appellant has been convicted, is for having committed rape on his daughter/the prosecutrix, a girl aged about 9 years, at the time of commission of the offence.

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

- i. The prosecution case, as unfurled, is that on 30.09.2012, the prosecutrix was brought to the police station by her mother, Smt. Kamlesh (PW-1) with a complaint that her daughter had been raped by the appellant (father of the prosecutrix). After recording the statement of PW-1 [Ex.PW-1/A], W/SI Saroj Bala (PW-15) accompanied the prosecutrix to RTRM Hospital and got the prosecutrix medically examined [vide MLC Ex.PW-7/A].
- ii. Thereafter, FIR No. 211/2012, (hereinafter referred to as the 'subject FIR') was registered against the appellant, for the commission of offences punishable under the provisions of sections 376, 377 and 506 of the IPC. [Ex.PW-10/A]
- iii. On the same day, i.e. 30.09.2012, the appellant was arrested [vide arrest memo Ex.PW-1/B] at the instance of PW-1; and sent for

medical examination [vide MLC Ex.PW-16/A]. The appellant also made a disclosure statement [Ex.PW-2/A] and pointed out the place of the occurrence [Ex.PW-2/B].

- iv. As per the subject FIR, the complainant/PW-1 is the wife of the appellant and they have two daughters. They resided at a rented accommodation at C-35, Raghuvir Enclave, Najafgarh, Delhi and the appellant was employed as a Guard at PACL Insurance Company. The prosecutrix is the elder daughter of PW-1 and the appellant. Around a month prior to making the complaint, the prosecutrix complained to PW-1 of abdominal pain and of difficulty in passing stool. Pursuant to the same, on 28.09.2012, PW-1 got the prosecutrix medically examined at the Primary Health Centre, Najafgarh and administered medicines to her; but since no relief was felt by the prosecutrix, PW-1 again got her checked on 29.09.2012. She was prescribed medicines for internal consumption and for application on the body. Whilst applying the medicine on the body of the prosecutrix, PW-1 noticed some swelling on her private part, pursuant to which PW-1 took the prosecutrix to the same hospital in the evening, where the doctor informed PW-1 that the prosecutrix has been sexually assaulted. PW-1 then inquired from the prosecutrix about the same and the latter disclosed that about one

month back, at their house, the appellant had committed rape on her 2-3 times and threatened her with dire consequences if she disclosed about the rape to anybody.

- v. The medical opinion in the MLC report, dated 30.09.2012, [Ex. PW-3/A], *qua* the prosecutrix, returned a finding to the effect that, “no fresh external injury marks present; hymen is intact; redness present in vulval area; and anal area- Nil”.
- vi. The exhibits of the case [Undergarments of the prosecutrix, blood sample, urine sample, nail clippings, 02 vulval swabs and 02 anal swabs, pertaining to the prosecutrix; and the exhibits pertaining to the appellant] were sent for examination to FSL, Rohini.
- vii. Charge was framed against the appellant under sections 376, 377 and 506IPC, vide order on charge dated 22.12.2012, wherein, he abjured his guilt to the charge framed against him and claimed trial.
- viii. During the course of trial, to bring home the charges, the prosecution examined sixteen witnesses, whose testimony is summarized hereinbelow:

- Smt. Kamlesh, [PW-1], mother of the prosecutrix deposed that she has been residing at C-35, Raghubir Enclave, Najafgarh, New Delhi with her husband and two daughters. She further deposed that they shifted to this house one month

prior to the date of the incident, before which they were residing at RZA-52, Raghuvir Enclave, Najafgarh. She has further deposed that her daughter, the prosecutrix, used to complain of stomach ache and difficulty in passing stool, for about a month before the latter told her about the incident. PW-1 further testified that since the prosecutrix did not get any relief by a regular medicine, she got the prosecutrix examined at Primary Health Centre, Najafgarh, on 28.09.2012. PW-1 also testified that the medicine prescribed to her also did not provide her any relief and after taking her to the Primary Health Centre on 29.09.2012, the doctor prescribed medicine for local application. It has then been testified by PW-1 that whilst applying the medicine, she noticed some swelling on the private parts of the prosecutrix, pursuant to which she took the prosecutrix to the hospital. It has been deposed by PW-1 that the doctor informed her that the prosecutrix has been sexually assaulted. PW-1 testified that when she inquired about the same from the prosecutrix, the latter told her that about one month ago, the appellant/husband of PW-1/father of the prosecutrix had committed *galat kaam*, twice or thrice, with her in the old

house. PW-1 further testified that the appellant had threatened the prosecutrix with dire consequences if she told about the incident to anyone. She further deposed that after consulting with her mother, she informed the police about the incident, after which her complaint [Ex.PW-1/A] was recorded and the prosecutrix was medically examined at RTRM Hospital. It has been further deposed by PW-1 that upon her asking, the prosecutrix informed her that the appellant inserted his penis in the vagina and anus of the prosecutrix; and that she noticed some redness around the private parts of the prosecutrix. PW-1 further testified that thereafter the appellant was arrested from their house [vide arrest memo Ex.PW-1/B], and upon interrogation, he admitted to his guilt.

- Devender [PW-2], deposed that he joined the investigation in the present case and that during the course of the investigation, the prosecutrix was taken to RTRM Hospital where she was medically examined. He further deposed that thereafter, the appellant was arrested from their house, and his disclosure statement was recorded [Ex.PW-2/A]. PW-2 further deposed that the appellant pointed out the place of

occurrence vide memo Ex.PW-2/B, and that thereafter he was medically examined.

- Dr. Pratibha [PW-3], deposed that she conducted the medical examination of the prosecutrix and rendered the report [Ex.PW-3/A]. She deposed that the hymen was found intact and that she observed redness in the vulvar area and also the anal area was normal.
- Rajbala [PW-4], deposed that her daughter/PW-1 got married to the appellant and they had two daughters aged about 9 years and 7 years. PW-4 further deposed that the relationship between PW-1 and the appellant were strained because of the latter's consumption of alcohol. She further deposed that on 29.09.2012, PW-1 informed her about the redness around the private parts of the prosecutrix and that the doctor had suspected that the prosecutrix had been sexually assaulted. PW-4 further deposed that upon inquiring about the same from the appellant, he admitted his guilt and apologized for his conduct. Thereafter, the police was informed of the incident.
- Seema, Ct., P.S. Baba Hari Dass Nagar (PW-5) deposed that on 30.09.2012, she joined the investigation in the present case

as the Constable and had gone to RTRM Hospital. She further deposed that the prosecutrix got medically examined and the doctor handed over the sealed parcels which were seized vide seizure memo Ex.PW-5/A. It has further been deposed by PW-5 that, thereafter, the police team reached the house where they used to reside before they shifted to the house they were currently residing at and that the prosecutrix told the IO that the incident of rape was committed at the house they used to previously reside in. It has been further deposed that thereafter, the police team reached the house of the prosecutrix where they currently resided, and from where the appellant was arrested.

- Baljeet Singh, Ct., P.S. Baba Hari Dass Nagar (PW-6), deposed that on 30.09.2012, he took the appellant to RTRM Hospital to get him medically examined. He further deposed that after the medical examination of the appellant, the doctor handed over six sealed parcels alongwith one sample seal to him which were handed over to PW-15, who seized the same vide seizure memo Ex.PW-6/A.
- Dr. Satish Chander Yadav, Medical Officer, RTRM Hospital, Jaffarpur, New Delhi (PW-7) deposed that on 30.09.2012, at

about 12.45 P.M., the prosecutrix was brought to the hospital for medical examination and was medically examined by him [vide MLC Ex.PW-7/A] and that he referred the prosecutrix to the gynecologist department for her internal examination.

- The prosecutrix (PW-8) identified the appellant as her father and deposed that she did not remember the exact date and month of the incident, but that it happened 3 or 4 months ago. She further deposed that at the time of the incident she was residing with her parents and younger sister in a rented accommodation at Najafgarh. She further deposed that on the date of the incident in the evening she was playing outside the room with her sister when the appellant called her inside the room. She testified that her mother had gone for work at that time and was not present in the room. The prosecutrix also deposed that the appellant after calling her inside the room took off the pants and underwear she was wearing and thereafter took off his own pants and underwear. Further she deposed that the appellant first inserted his male organ first from the front side and then from behind. Further that, after the act was over the appellant threatened and warned the prosecutrix to not disclose the incident to anyone or he would

kill her. The prosecutrix further testified that when PW-1 came home from work at about 6 P.M., that evening she out of fear did not disclose the incident to her. Furthermore that, about one week after the incident she was feeling some pain in the abdomen and was also finding it difficult to pass stool; and at that time she disclosed the incident to PW-1, who took her to a doctor. Lastly, she deposed that, the incident was reported to the police by PW-1, whom she accompanied to the Police Station; and that the police officials got her medically examined in the hospital; and also that the police officials took her to Court where her statement was recorded.

The prosecutrix deposed that she studies in Pratibha School No.1, Najafgarh; and does not know where the appellant works but that he used to go to work sometimes in the morning and sometimes in the night time. Further that, on the day of the incident PW-1 left for work in the morning, but sometimes she used to leave alongwith her when she used to leave for school, and return at about 6 P.M. in the evening. Further that, sometimes PW-1 and the appellant used to quarrel on petty matters and sometimes the latter used to beat up the former, but PW-1 never called the police due to the

quarrels. Further testified that, it is wrong to suggest that after the quarrel the prosecutrix and PW-1 used to go to the house of her Naana and Naani. Further that, neither does she remember the date when she alongwith PW-1 went to the police station nor the date when she was taken to the hospital by PW-1. Further that, police had recorded her statement in the police station.

- Mr. Rajpal (PW-9) deposed that PW-1 and the appellant whom he had identified, are married to each other. Further that they were residing as tenants in a room in his house bearing No.C-35, Raghuvir Enclave, Najafgarh, New Delhi for 25 days in the month of September, 2012. Further that the Appellant was working as a security guard in an insurance company and he used to return from his job at about 3 P.M.
- Mr. Sadan Kumar, Head Constable, P.S. Baba Hari Dass Nagar (PW-10) deposed that on 30.11.2012, PW-2 handed him over a rukka sent by PW-15 on the basis of which he registered the subject FIR under sections 376, 377 and 506 of the IPC.
- Mr. Ashique Ali Khan, SI, P.S. Baba Hari Dass Nagar (PW-11), deposed that he received DD No.10-A from the duty

officer at 08:30 A.M. to the effect that a girl has been sexually assaulted by her own father; and he alongwith PW-2 reached the spot of incident where he met the prosecutrix and her mother (PW-1). Further that, on the instructions of PW-2 he brought the prosecutrix and PW-1 to the Police Station and handed them over to PW-15.

- Mr. Raj Singh, Head Constable, P.S. Baba Hari Dass Nagar (PW-12) deposed that on 30.09.2012 PW-15 deposited 6 sealed parcels and 5 sealed parcels with respect to the appellant and the prosecutrix respectively, and the same were deposited in the Malkhana. He further deposed that on 09.10.2012 the said samples were taken by PW-15 to FSL, Rohini and the acknowledgement receipts thereof were handed over to him.
- Ms. Ruchika Singla, MM, Dwarka Courts, New Delhi (PW-13) deposed that she recorded the statement of the prosecutrix [Ex.PW-13/A] in her own handwriting.
- Ms. Nirmala Gupta (PW-14), Headmistress, MCD Primary School, Najafgarh, Delhi, deposed that at the time of the admission of the prosecutrix in the school, her parents had submitted the birth certificate issued by Govt. of NCT of

Delhi which shows her date of birth as 27.09.2003 (Photocopy is Ex.PW-14/B).

- W/SI Saroj Bala, P.S. Chhawla (PW-15) deposed that on 30.09.012, she was handed over DD No. 10-A at P.S. Baba Hari Dass Nagar and she recorded the statement of PW-1 [Ex.PW-1/A]. She further deposed that she took the prosecutrix for medical examination and collected the samples for scientific examination [Ex.PW-5/A]. Rukka was prepared [Ex.PW-15/A] and the same was handed over to Ct. Devender (PW-2). She further deposed that PW-1 informed her that the appellant would be present at the house of PW-1 and the appellant. She further testified that after reaching the house, the police team arrested the appellant vide arrest memo Ex.PW-1/B. She further testified that, personal search of the appellant was conducted [Ex.PW-1/C]; the disclosure statement [Ex.PW-2/A] of the appellant was recorded; and the appellant pointed out the place of occurrence. She further deposed that the appellant was also taken for medical examination to RTRM Hospital and the samples were seized [Ex.PW-6/A] and deposited in the Malkhana.

- Dr. R. Shankarnarayanan, Medical Officer, RTRM Hospital (PW-16) deposed that he conducted the medical examination of the appellant; prepared the MLC [Ex. PW-16/A]; and handed over the samples pertaining to the appellant to HC Virender.

- ix. The appellant, in his statement recorded under the provision of section 313 of the CrPC, whilst denying the case of the prosecution, stated that he has been falsely implicated in the case at the instance of PW-1, since he objected to the illicit relations of PW-1 with someone. The appellant also denied making the disclosure statement [Ex.Pw-2/A] to the police or pointing out the place of occurrence.
- x. The Ld. Trial Court, after appreciating the evidence brought on record by the prosecution, came to the conclusion that the prosecution had been able to establish the charge against the appellant and further that the defence taken by the appellant was fabricated and concocted. Therefore, the Ld. Trial Court convicted the appellant for commission of the offences punishable under the provisions of sections 376, 377 and 506, IPC.

5. Learned counsel appearing on behalf of the appellant, would canvass that the learned Trial Judge has erred in convicting the appellant, inasmuch

as, the appellant has been falsely implicated in the case at the instance of PW-1, since the appellant objected to the latter's illicit relations with somebody. Learned counsel would then urge that PW-1 has concocted a false story of rape, tutoring the prosecutrix, in order to get rid of the appellant. Learned counsel for the appellant would then submit that material improvements have been made by the prosecutrix in her statements, making her testimony unreliable. Further, it would be asseverated on behalf of the appellant that the prosecutrix has not disclosed the exact date of the incident and has just stated that the alleged incident occurred 3-4 months prior to 07.01.2013, i.e. the date of her medical examination. Furthermore, it has also been urged that no complaint of stomach ache was made by the prosecutrix to her school teacher.

6. The counsel for the appellant would also submit that there has been a delay of one month in registration of the FIR in the present case and no reasonable cause has been brought on record by the prosecution for the said delay. In this behalf, it would also be contended that the Rukka was prepared at 5.45 P.M., whereas DD No.10-A was recorded at 8.30 A.M.

7. It would then be urged on behalf of the appellant that the medical evidence in the instant case does not support the case of the prosecution. In order to buttress this submission, reliance would be placed on the Modi's Medical Jurisprudence. In this behalf, it would also be urged that only the

receipts *qua* the exhibits sent to the FSL have been placed on record and no FSL results have been obtained in the instant case. In this behalf, it would also be urged that the prescription dated 29.09.2012, of the primary healthcare centre, whereby the doctor on duty had suggested that the prosecutrix has been sexually assaulted, has not been brought on the record. Further, the prescription dated 28.09.2012, of the primary healthcare centre has also not been brought on record. Furthermore, it has been urged that the doctor who informed PW-1/mother of the prosecutrix about the prosecutrix having been sexually assaulted, was not made a witness in the present case and thus not examined.

8. It would then be urged on behalf of the appellant that relevant questions were not put to the appellant whilst recording his statement under section 313 of the CrPC.

9. The learned counsel appearing on behalf of the appellant would lastly pray for a lenient approach with regard to the sentence imposed upon the latter for the commission of the offences.

10. Per contra, Mr. Ravi Nayak, Ld. APP appearing on behalf of the State would urge that the testimony of the prosecutrix has been corroborated by, and finds full support in, the testimony of the mother of the prosecutrix, Smt. Kamlesh (PW-1). The Ld. APP, would further urge that the law enunciated with regard to convicting an accused for the

offence under sections 376, 377 and 506 IPC, on the basis of sole testimony of the prosecutrix, is a well-settled proposition in view of various decisions rendered by the Hon'ble Supreme Court. The Ld. APP, would lastly assert that the clear, creditworthy and unshattered testimony of the prosecutrix is sufficient to establish the case of the prosecution, and the same is reliable.

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

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

13. The Hon'ble Supreme Court, in *State of Rajasthan v. Om Prakash*, reported as (2002) 5 SCC 745, dealing with a similar question in the case

of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court therein, relied upon earlier decisions and made the following observations:

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

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

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

15. Further, upon a plain perusal of the testimonies of the prosecutrix and her mother, the contention raised on behalf of the appellant to the effect that the prosecutrix is a tutored witness, cannot be accepted and is *dehors* any merit. The appellant has failed to controvert the testimony of the prosecutrix, which has remained unchallenged and unshattered even in the cross examination.

16. The appellant has contended that the testimony of the mother of the prosecutrix and of the prosecutrix is inconsistent inasmuch as, during her cross examination, PW-1/mother of the prosecutrix deposed that the latter complained of stomach ache 10 days prior to the complaint being made to the police, whereas, during her examination-in-chief, she had testified that the prosecutrix was complaining of a stomach ache for one month prior to the date on which the complaint was made.

17. In our considered view, a mere difference in stating the time period when her daughter complained of stomach ache, does not in any manner shatter the testimony of PW-1/mother of the prosecutrix. Therefore, this submission made on behalf of the appellant is untenable and cannot be accepted.

18. It would be relevant to observe that the testimony of the prosecutrix finds complete support in the testimony of her mother, which has also remained consistent throughout.

19. Therefore, a mere assertion made on behalf of the appellant, that the prosecutrix is a tutored witness, does not come to the aid of the appellant, when the former's statement is also completely corroborated by the evidence of the other prosecution witnesses (PW-1 & PW-4).

20. Further, a perusal of the cross examination of PW-1/mother of the prosecutrix and PW-4/mother-in-law of the appellant, would reveal that no question was put to either of them in cross examination, in relation to any alleged illicit relation of PW-1 with any other person. On the contrary, it is observed that both these prosecution witnesses were cross examined with respect to some property dispute between the appellant and PW-1, which was strongly denied by both the witnesses.

21. In view of the foregoing, it is clear that the defence raised by the appellant that he has been falsely implicated in the case by PW-1/his wife

and mother of the prosecutrix, because of her illicit relationship with some other person, is a mere after-thought. It is also relevant to observe that no cogent material apart from the suggestions has been brought on record by the appellant to establish his defence.

22. In this view of the matter, the bald defence raised on behalf of the above mentioned appellant that he has been falsely implicated in the case by his wife, the mother of the prosecutrix, PW-1, is rejected, keeping in view the evidence adduced on record which fully establishes the case of the prosecution.

23. Coming now to the medical evidence adduced; the medical opinion contained in the MLC report, dated 30.09.2012, [Ex. PW-3/A], *qua* the prosecutrix, returned a finding to the effect that, “no fresh external injury marks present; hymen is intact; redness present in vulval area; and anal area- Nil”. No FSL Result has been obtained.

24. The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in the case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in the case of a child rape, a Coordinate Bench of this Court in ***Lokesh Mishra v. State of NCT of Delhi***, in Criminal Appeal No. 768 of 2010, decided on 12.03.2014, relying on earlier decisions of the Apex Court, while

upholding the conviction under section 376 IPC, made the following observations:

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

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

“18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.””

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

26. Although in the present case it is observed that vide the MLC, [Ex. PW-3/A], it has been opined that no fresh external injury marks were found to be present and the hymen was found to be intact, it is, however, relevant to note that the examination was conducted on 30.09.2012, approximately one month after the date of the incident. Further, pertinently, it has clearly been opined that redness was found to be present in vulval area.

27. The contention raised on behalf of the appellant that since the hymen was found to be intact and no fresh external injury marks were present and also the anal region was found to be normal, no charge of rape can be sustained, does not hold water, in keeping with the settled position of law as discussed hereinabove. Injuries are not a *sine qua non* to prove a charge of rape.

28. In light of the above, we find no weight in the contention urged on behalf of the appellant that the medical evidence does not support the case of the prosecution.

29. In view of the foregoing discussion, in our considered view, the prosecution has established the guilt of the appellant beyond reasonable doubt. There is no gainsaying the position of law and there can be no quarrel with the proposition that when the testimony of the prosecutrix is unimpeached and beyond reproach, the conviction of the appellant can be

sustained based solely on it. In the case at hand, the same has also found thorough and complete support in the evidence *aliunde* led by the prosecution.

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

31. Further, let it not be forgotten that this is a case of rape on a girl child, only 09 years old at the time of commission of the offence, by her own father. Nothing can be more heinous than a crime committed on the person of a child by her father, the one who is duty-bound to provide her unflinching protection from all harm.

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

and material abandonment. [Ref: *State of Rajasthan v. Om Prakash (supra)*]

33. In our view, consequently, the sentence awarded to the appellant by the Ld. Trial Court does not warrant any modification. Therefore, the judgment and order on conviction dated 18.02.2013 and the order on sentence dated 23.02.2013 are both hereby upheld.

34. Accordingly, the present appeal fails and the same is dismissed.

35. The Trial Court Record be sent back.

36. Copy of the judgment be communicated to the appellant through the Superintendent, Tihar Jail and also be sent for updation of the records.

SIDDHARTH MRIDUL, J.

MUKTA GUPTA, J.

SEPTEMBER 01, 2017

dn/mk/sb/ap