

\$~R-12

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. 727/2014**

Judgment reserved on 05th September, 2017
Judgment pronounced on 15th September, 2017

RAJESH TIWARI

..... Appellant

Through: Mr. Vikas Padora, Advocate
Versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

CRL.A. 727/2014

1. The present appeal has been instituted by the appellant under Section 374 of the Code of Criminal Procedure, 1973, (hereinafter referred as “Cr.P.C.”) against the impugned judgment dated 24.09.2012 and order on sentence dated 28.09.2012 passed by the Court of ASJ, Rohini Courts, Delhi, (FIR No. 75/2011, P.S. Aman Vihar, New Delhi), whereby the Appellant was convicted under Section 376(f) and 506 of The Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and for the offence punishable u/s 376(f) IPC, he has been awarded rigorous imprisonment of ten years and a fine of Rs.20,000/-, and in default of fine, to further undergo six months simple imprisonment. Further, the convict was also sentenced for three years rigorous imprisonment with a fine of Rs.5000/- for offence punishable under Section 506 IPC, in default

of fine, he shall further undergo simple imprisonment for three months.

2. The case of the prosecution as observed by the Trial Court vide its order dated 24.09.2012 is that: -

“.....at about 12 noon she was playing holi in the street , when her maternal uncle hereinafter called as Mause (husband of her mother sister) asked her to bring milk and called her to his house for bringing dolchi (a kind of utensil used to carry milk) and when she reached at his Mause house and was about to lift the dolchi, her Mause bolted the Kundi of the door, she asked him that, ‘ what he has done’, her mother will search her’, on which her Mause slapped her and thereafter took her into kitchen, where he forcefully removed her jeans panty and kachi (underwear) and also removed his pant and got naked. She tried to raise alarm, but he pressed her mouth and thereafter forcefully committed wrong act (galatkaam) after lying down her on the mattress (gudri) on the floor of kitchen. After committing wrong act he threatened her that if she disclose anything, then he will lift her and her parents. Thereafter, she came back to her house and did not tell anything as she was afraid and her mother was also not well. She further stated that she was feeling pain in her private parts and blood was coming out when her mother woke up, she told entire incident to her mother. Her mother called one Sunita (Riste ki mausi) and thereafter, her maternal uncle (Mama) took her to the hospital.”

3. During trial, the prosecution relied upon sixteen witnesses. The statement under Section 313 Cr.P.C. were recorded wherein the appellant denied all the incriminating circumstances appearing in evidence against him and claimed to be falsely implicated in the case.

4. After considering the evidence on record and the contentions of the parties, the Trial Court held the appellant guilty for the offences under Sections 376 (f) and 506 IPC. Hence, the present appeal.
5. Mr. Vikas Padora, counsel for the appellant challenged the impugned judgment being perverse, based on conjectures and surmises and is not properly supported by the evidence/material on record; that there are material contradictions in the statements of the prosecutrix and the Trial Court has erred in relying on the testimony of the Prosecutrix which culminated in the conviction of the appellant; that there were material contradictions in the testimonies of other prosecution witnesses which had been ignored; that the blood stain which was found on the alleged mattress (Gudri) was never proven by the prosecution to be that of the appellant; that the appellant has been falsely and erroneously implicated in the present case by the family members of the appellant's wife, as the marriage was a love marriage and was solemnised against their (wife's family) will; that the present case is wholly based on circumstantial evidence and the prosecution had miserably failed in completing the chain of events, in order to prove the guilt of the appellant.
6. On the other hand, Mr. Mukesh Kumar, learned Additional Public Prosecutor for the State contended that the prosecutrix was a minor when the heinous crime of rape was committed on her; that the testimony of the prosecution witnesses and MLC

report of the prosecutrix 'P' had proved the commission of the crime beyond any reasonable doubt; that the testimonies of the other prosecution witnesses were sound and duly corroborated with each other; that the presence of blood stain on the mattress, which was recovered from the house of appellant further establishes the case of the prosecution; that not only the version of the prosecutrix is clear and unambiguous, but the medical evidence(s) further establishes the case of the prosecution; that the prosecution had proved his case on all counts and hence no interference is called for by the Hon'ble Court.

7. I have heard learned counsel for the parties and have also perused the material available on record and considered their rival submissions. The counsel have also taken us through the record of the trial court and the testimonies of the witnesses.

STATEMENT OF PROSECUTRIX : PW-5

8. The case of the prosecution is primarily based on the testimony of prosecutrix. At the outset, it is relevant to rummage through her testimony. The Prosecutrix (PW-5) during her Examination-in-Chief deposed as under:

"I was studying in 4th class at the time of incident i.e. On 20th March, 2011, on that day at about 12 Noon, I was playing in the gali outside my house, along with children of the neighbourhood. At that time, my Mausa Rajesh, accused present in the court today (correctly identified by the witness) came from the house of his sister, which is also situated in the next street of my house and asked me to bring milk from the market. I went to the house of accused Rajesh to take the utensil (Dolchi), which is also

situated near to my house, which is at a distance of one street i.e. Gali No. 3 in the same village. My mausa i.e. Accused also came there when I was taking the Dolchi, which was hanging on the wall of the room, and bolted the door from inside (kundilaga li). When I had asked my Mausai.e. Accused, 'What is he doing,' then he asked me to 'keep quiet (ChupHoJao)', then he slapped me and took me inside the kitchen. Thereafter, accused removed my jeans and thereafter underwear (kachi). Then my Mausa i.e. accused Rajesh Tiwari had committed wrong act with me (He put his urinating part into my private part and thereafter he threatened me that if I had told the said incident, then he will get kidnapped my father, as well as , my mother (Yadi Tu Kisi Ko Bataygi to tere Papa Ko Uthwa Dunga aur Mummi Ko Uthwadunga). After wearing my clothes, I came back to my house. At that time I was frightened.

Thereafter , my mother came to the house and I had narrated the entire incident to my mother. My mother had called my Mausi namely Sunita (not the wife of the accused). My Mama namely Shiv Kumar was also called. Thereafter, my Mausi, my mother and My Mama (maternal uncle) took me to the hospital. There doctor medically examine me. Thereafter, two police officials came there and recorded my statement Ex.PW5/A, which bears my signatures at point A. When i was medically examined by the doctor, the said doctor had also taken my clothes, which I was wearing. I remained admitted in the hospital and discharged on 25.03.2011 and then i came back to my house.

Thereafter, I was taken before Judge by the police officials, who had recorded my statement.

XXXXXX The statement u/s 164 Cr.P.C is shown to the Magistrate, which is Ex. PW5/B, which bears her signatures on all the pages at point A, B and C respectively. I can identify my clothes if shown to me, it was jeans and one undergarment (kachi).

At this stage, one sealed pullanda, sealed envelope with the seal of FSL NK Delhi is produced by the MHC(M), same is opened, it found containing two envelopes, and one of the envelopes, which is unsealed opened and it found a blue colour jeans and having some blood stained marks and one underwear (kachi) are taken out, which are shown to the witness and witness identified both the clothes, as her own, which she was wearing at the time of incident.”

During Cross Examination the prosecutrix deposed as under: -

“XXXX The accused after the incident had asked me to go (bhagadiya) and he went away from the house after locking the same. I had raised the alarm when accused committed galatkaam with me. When I reached at the house of my nani, there I met first with my mother and nani. I had not told about the incident to my mother, nani or my mausi immediately after reaching at the house of my nani. XXXXX”

9. After going through the statements of the Prosecutrix, it is summarily clear, that the deposition of Prosecutrix has remained consistent, unfettered, invariable and even, throughout the entire process of recoding of her evidence in the present case. There are no lacunae in the entire process of recording of evidence of the Prosecutrix which can pin point to any inconsistency and/or contradiction in her deposition.

STATEMENT OF OTHER MATERIAL WITNESSES

10. Before dealing with the arguments of the parties, it would be useful to examine the testimonies of the other witnesses i.e.; PW-6 Smt.Sunita (OT Technician, Siddarth Hospital), PW-7 Smt. Rekha Tiwari (Mother of Prosecutrix), PW-8 Shiv Kumar (Uncle of

Prosecutrix) and PW-16, S.I. Mahavir Singh (Investigating Officer):

11. PW-6 Smt. Sunita / Mausli (OT Technician, Siddarth Hospital) deposed as under: -

“.....On 20.03.2011 at about 2/2.30 p.m. I had received a call from Rekha, to whom I treat as sister (Muboli Sister). She told me that, Roshini's condition was not well, and she asked me to reach at her house. Therafter, i reached at the house of Rekha which is situated near Parvesh Model School, Parvesh Nagar, Mubarakpur, Delhi and saw that Roshini D/o. Rekha, who was ten year girl, was lying on the bed and she was having pain, then i asked her, what had happened with her', then she told about the incident. I also noticed that there was heavy bleeding from the private parts of the Roshini. She had also told me that, her Mausli Rajesh (who is present in the court, correctly identified by the witness) had committed sexual intercourse with her. I know the accused Rajesh, as he along with his wife have once visited to my house on earlier occasion for home work and I had also seen him on many occasion at the house of Rekha.

Thereafter, I called the Maternal uncle (Mama) of the Roshni, namely Shiv Kumar, he came with his motorcycle and I alongwith her mama took her to the SGM Hospital. Her mother also reached there in the hospital in a separate vehicle.XXXXXX”

...After sometime, police officials also reached there and I also narrated them about the incident and recorded my statement.XXXX ”

12. PW-7, Smt. Rekha Tiwari (Mother of the Prosecutrix) deposed as under: -

“XXXXXX On the next day i.e. 20.03.2011 at about 2/2.30p.m. I went to take bath. My mother told me that, Roshni is not feeling well, then I came on the ground floor of the house, where Roshni was lying on the bed, then I asked her, what has happened beta, she told me that, she is having pain in her stomach, when i removed her quilt (Razai) to see her stomach, I noticed that blood on that pant, which she was wearing near the stomach. Then I asked from her, what has happened, then she told me the entire incident and asked me not to take any action against Rajesh Mause. She told me that, Mause Rajesh, (who is present in the court today who is husband of my real sister namely Geeta) had asked her to bring milk and when went to the house of Rajesh, the accused Rajesh also came there and committed sexual intercourse with her.

Thereafter, I made a call to my friend Sunita and asked her to reach my house immediately. She came to my house and checked my daughter Roshni and she called my brother Shiv Kumar. She and my brother Shiv Kumar took my daughter Roshni to the SGM Hospital on the motorcycle of Shiv Kumar. I also reached there in a private auto. My daughter Roshni was admitted in the hospital for her treatment, I had given address of my mother's house to the doctors in the MLC of my daughter's Roshni.XXXXXX

Thereafter, police officials also reached there and recorded the statement of my daughter 'P', as well as my statement. The clothes of my daughter , which she was wearing was taken by the doctor.

Roshni is my daughter and at present she is 11 years of age and studying in class 5th in the Government Girls School, Mubarkpur, DelhiXXXXXX.

At this stage, clothes i.e; One jeans and undergarment (Kachi), which was taken out from the pullanda, opened earlier at the time of recording statement of the Prosecutrix, is shown to the witness, which she correctly identified i.e; jeans and undergarment as of her daughter, which are already exhibited as Ex.P1 and Ex. P2.XXXX "

13. PW-8, Shiv Kumar (Maternal uncle) deposed as under: -

“XXXX At about 3/3.15 pm, I received phone call from Sunita, who was working with me at the said hospital and she called me immediately at my house, as the condition of ‘P’ was not good. I immediately reached my house and found that condition of my Bhanji ‘P’ was not good and thereafter, I alongwith Sunita immediately took ‘P’ was not good and thereafter, I alongwith Sunita immediately took ‘P’ to SGM Hospital. On the way to the hospital, Sunita told me that, Rajesh Tiwari (my brother in law) committed rape with ‘P’. Thereafter, ‘P’ was admitted in the hospital and she was medically examined.

Thereafter, police reached at the hospital and they conducted their proceedings. ‘P’ is aged about ten years.XXXXXX

On the next day, i.e. 21.3.201, accused Rajesh Tiwari was arrested from the Nangloi Railway Fatak at about 2-2.15 p.m. in my presence, by the police, vide memo Ex.PW8/A, which bears my signatures at point A. His personal search was taken vide Ex. PW8/B, which bears my signature at point A. His personal search was taken vide

Ex.PW8/B, which bears my signature at point A. During the personal search of the accused, one key with key ring recovered. Police interrogated accused Rajesh Tiwari and he confessed about the commission of rape with 'P' and his disclosure statement was recorded, vide ExPW8/C, which bears my signatures at point A.

Thereafter, at the instance of the accused Rajesh Tiwari, one Gudri(handmade mattress) was recovered from his house, which was having blood stains. The said Gudri was taken into possession by the police and sealed with the seal of MS and seized the same vide seizure memo Ex.PW8/D, bearing my sign at point A.

Accused Rajesh Tiwari is present in the court today(correctly identified by the witness). I can also identify the seized article if shown to me. At this stage, MHC(M) has produced one cloth pullanda in sealed condition, sealed with the seal of the court and the same is opened and a Gudri (Mat) already Ex.P3 is taken out alongwith one cloth pullanda bearing the seal of MS and same are shown to the witness, which he identifies correctly Gudri (already Ex. PW), as recovered at the instance of accused from his house.

Accused Rajesh was not with us on the day of holi festival.I had not seen the accused Rajesh on that day as I was participating holi with my friends.XXXXX.

No other tenant was residing in the house in which accused Rajesh Tiwari was residing. XXXXXX

Wife of accused Rajesh Tiwari was not present at her house. Vol- she came at our house on 19.3.201 and she was present at our house on 20.03.201 and 21.03.2011.XXXXXX

Accused Rajesh Tiwari was arrested at about 2-2.15 p.m. After his arrest the accused was straightaway taken to his house. The writing work was done by the police where accused was arrested and also at the house of accused where recovery was made.XXXXXX "

14. *According to PW-16 SI Mahavir Singh (Investigating Officer), On 20.03.2011, he was posted as SI in PS Aman Vihar, PP Nagar. ON the day, Ct. Sunil handed over him the copy of FIR and original rukka and investigations of the case was handed over to him. He then, along with Ct. Sunil reached SGM Hospital, where he met SI Prem Singh, who handed over all the investigation papers and exhibits to him. It was stated by him that Prosecutrix was found under treatment in the hospital. The statement of Rekha (mother of 'P'), Shiv Kumar (Maternal Uncle of 'P') and Sunita (OT, Technician) was recorded by him. He along with Ct. Sunil went in search for the accused Rajesh Tiwari but his house was locked. Even Shiv Kumar joined them later. On the basis of information received by the secret informer, the accused was caught at Nangloi Railway Station, Prem Nagar. The appellant was interrogated; personal search was conducted and arrested. He was taken to his house which was opened with the help of a key which was recovered from his possession. In his house one blood stained Gudri was produced by him, which was thereafter sealed with seal MS. On 22.3.2011, the age proof certificate was collected by him from MC Primary School, Mubarakpur Dabas. He obtained the copy of the statement of the prosecutrix by priorly moving an*

application for recording of such statement and also obtained the FSL report and filed the same in the court.”

15. From the perusal of the above statements of the prosecution witnesses, it is evident that the testimonies of other witnesses clearly corroborate and lend support to the testimony of the prosecutrix. After going through the statement made by the prosecutrix and the other prosecution witnesses, it is established that the story of the prosecutrix is well established, reliable and purely matches/corroborates with the statements of other witnesses.

MEDICAL EVIDENCE

16. Medical evidence here gains importance as to whether the prosecution was able to establish its case against the appellant that the act was committed by him. PW-13, Dr. Ashoo Gupta (Specialist, SGM Hospital) deposed as under: -

“MLC No. 190 of Roshni d/o Arjun Tiwari, aged 10 years, dt. 20.3.2011 is seen by me and same was prepared at the SGM Hospital, Mangolpuri at the casualty and the same is ExPW13/A and the patient was referred to gynae department. In the gynae department Dr. Suman medically examined Roshni and gave her observations in the encircled portion at pt.A to A1 of Ex.PW13/A. The same is in the handwriting of Dr. Suman and bears her signature at pt.B. According to the MLC Roshni was brought for examination with alleged history of sexual assault at 12pm(20.05.2011) as told by the patient. According to the MLC in the local examination, hymen was torn and there was tear around 2cm in the posterior introitus. According to this MLC, all the samples including vaginal smear and clothes of patient were taken and

handed over to police in sealed condition along with the sample seal. According to this MLC Dr. Suman medically examined the above said patient Roshni at 5 pm on 20.3.2011.

*The patient Roshni was admitted in the gynae ward of GSM Hospital on 20.3.2011 and she was discharged from the hospital after her medical treatment on 25.3.2011. **During medical treatment the vaginal care was sutured in the operation theatre because it was bleeding.** I have also brought the medical treatment documents of the patient which are ExPW13/B."*

17. PW-15, SI Prem Singh (PS AmanVihar) deposed as under: -

"On 20.03.2011, I was posted as SI in PS AmanVihar. On that day after receiving DD No.59B, I along with Ct. Sushil Kumar reached at SGM Hospital and collected the MLC of "P" d/o Arjun Tiwari age around 10 years. Prosecutrix found in the hospital and i recorded her statement ExPW5/A and attested her signature at point A bearing my signature at point B. I prepared rukka Ex.PW15/A bearing my signature at PointA. Rukka was handed over to Ct. Sunil Kumar for registration of FIR.Doctor handed over to me the exhibits of the prosecutrix. He got the FIR registered and came back in the hospital along with SI Mahavir Singh to whom further investigation was handed over. I handed over all the investigation papers and exhibits.XXXXXX "

18. From the evidence of both the doctors/ specialists and records of SGM Hospital, it would not be out of place to state here that it is evidently clear that prosecutrix was under critical/ intensive care at SGM Hospital, under the supervision of the doctor, who has testified for the same. The prosecutrix was admitted in the said

SGM Hospital on 20.03.2011 and was only discharged on 25.03.2011, and remained in intensive care and observation for a period of 5 days, the prosecutrix's vaginal care was sutured in the operation theatre as it was continuously bleeding. The prosecutrix's vagina wall was ruptured and also confirmed that hymen was torn around 2cm in the posterior introitus. 20cc of clots were removed from her vagina. The medical examination proves beyond any reasonable doubt that the victim was physically assaulted.

IMPUNGED JUDGEMENT – GROUNDS OF CHALLENGE

19. The contention raised by the appellant as to the fact that the Trial Court erred in completely relying on the sole testimony of the prosecutrix in deciding the present case and that the prosecution was not able to prove the fact beyond reasonable doubt.
20. The Law in relation to the testimony of the Prosecutrix has been settled by the Hon'ble Supreme Court and the Courts of Law, in a catena of judgments. The settled proposition of law in relation to the facts and circumstances of the present case is no more *res integra* and can thus, be clearly seen from the decision and/ or observation of the Hon'ble Courts of Law. **In State of Madhya Pradesh v. DayalSahu (2005, 8 SCC 122)**, it was held as under:

“it was held that once the statement of the prosecutrix inspires confidence and the same is accepted by the Court, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration of her testimony is required unless there are compelling reasons which necessitate the same.”

In **Vijay v. State of M.P. : (2010 8 SCC 91)**, it was held as under:

“14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

In **State of Himachal Pradesh vs. Raghbir Singh (18.02.1993 - SC)**, it was held as under:

"There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record."

The Hon'ble Supreme Court in **State of Rajasthan v. Om Prakash**, reported in **(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 [SCC 384 : 1996 SCC

(Cri) 316], referring to State of Maharashtra v. Chandraprakash 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.

21. A reference deserves to be made to the binding ruling of the Supreme Court in the case of ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983(3) Supreme Court Cases 217***, guidelines with respect to appreciation of the evidence of a minor girl as a victim of the offence punishable under Section 376 of the IPC have been laid down, which are as under:-

“10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of

overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. 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 non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect her chastity had ever occurred, (2) she would be conscious of the danger of being ostracized by the society or being looked down 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 inevitably and almost invariably result in mental torture and 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 on 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 husbands' family of a

married woman, would also more often than not, want to avoid publicity on account of the 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 a deterrent.”

22. There can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, as it is unimpeachable and beyond reproach, conviction can be based solely upon it. The law permits that the testimony of a prosecutrix can be accepted without any corroboration in material particulars, for she has to be placed on a higher pedestal than an injured witness.
23. It is evident from the above observations and judgments as quoted above that the testimony put forward by the prosecutrix can be totally relied upon. She remained categorically clear that rape was committed upon her. There is no hesitation to hold that from the sole testimony of PW5 coupled with medical evidence and testimonies of the other relevant witnesses, the prosecution has established its case against the accused beyond shadow of reasonable doubt. The testimony of the prosecutrix ‘P’ (PW-5) is coherent, cogent and successfully corroborated in the cross examination. Her testimony is further proved by the medical evidence, MLC Ex.PW13/B. The remaining circumstances are corroborated by PW-6 Smt. Sunita (OT Technician, Siddarth

Hospital), PW-7 Smt. Rekha Tiwari (Mother of Prosecutrix), PW-8 Shiv Kumar (Uncle of Prosecutrix).

24. In view of the facts and circumstances of the case, after going through the prosecution witnesses, exhibits and other materials and evidence it becomes evident that the testimony of the prosecutrix was convincing and the corroboration of other witnesses is not required so far direct evidence is concerned. The sole testimony of the prosecutrix inspires confidence.

No Eye Witness and Circumstantial Evidence

25. Learned counsel for the Appellant argued that the entire case was based on circumstantial evidence and all the links in the chain were not complete and prosecution has miserably failed to prove its case in order to establish the conviction of the appellant.
26. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself is not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude

each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain in themselves are complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

27. The law on the circumstantial evidence is, by now, settled. In ***Sharad Birdhichand Sarda v. State of Maharashtra : 1984 (4) SCC 116***, this Court drew out the following test for relying upon the circumstantial evidence:

- (1) *The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) *The circumstances should be of a conclusive nature and tendency.*
- (4) *They should exclude every possible hypothesis except the one to be proved, and*
- (5) *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

28. The principle of this judgment was thereafter followed in number of decisions, they being *Tanviben Pankaj Kumar Divetia v. State of Gujarat* 1997 (7) SCC 156, *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru* 2005 (11) SCC 600, *Vikram Singh and Ors. v. State of Punjab* 2010 (3) SCC 56, *Aftab Ahmad Anasari v. State of Uttaranchal* 2010 (2) SCC 583 etc. It is to be noted that in the last mentioned decision of *Aftab Ahmad Anasari v. State of Uttaranchal (supra)*, the observation made is to the following effect:

“In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act

*must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.
(Emphasis supplied).”*

In *Pawan Vs State Of Uttaranchal* : (2009) 15 Supreme Court Cases 259, it was held as under:

“There is no eye witness account and the case depends wholly upon circumstantial evidence.

12. When a case rests on circumstantial evidence, such evidence must satisfy oft-quoted tests viz: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. Where the entire case hinges on circumstantial evidence, great care must be taken in evaluating circumstantial evidence to ensure that the circumstances on which the prosecution relies are wholly consistent with the sole hypothesis of the guilt of the accused.”

29. It is a well settled law that while appreciating circumstantial evidence, the court must adopt a very cautious approach and should record a conviction only if all the links in the chain are

complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care has to be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

30. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.
31. It is, therefore, in the light of above mentioned judgment, pertinent to mention that it needs no emphasis that while evaluating circumstantial evidence, which of course has to be done carefully, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged and the circumstances so shown by

the prosecution are compatible with no other reasonable hypothesis.

32. Though there was no other eye witness during the commission of the crime but the remaining circumstances were sufficiently proved and the chain of events are complete cumulatively, and therefore, there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else as proved circumstances unerringly point towards the guilt of the accused. The medical evidence of PW-5 further establishes that the victim was subjected to physical assault. It is, therefore, observed that in the present case, while dealing with the testimonies and various facts of the case as stated herein, it is clear that the prosecution had proved his case above and beyond reasonable doubt and the circumstantial evidence can be totally relied upon in order to ascertain the guilt of the accused.
33. As per the Scientific evidence, there was a detection of human blood on the Gudri, and it is also admitted that Gudri was recovered from the residence (kitchen) of the appellant, where the crime took place.

CONCLUSION

34. In my view, the contradictions pointed out by learned counsel for the accused are not of such magnitude that they may materially affect the impugned judgement. It has been held above that the testimony of the prosecutrix is trustworthy. Minor contradictions, inconsistencies, embellishments or improvement on trivial matters

without affecting the case of the prosecution, should not be made a ground to reject the evidence in its entirety.

35. Thus, from a bare perusal of the testimonies of the Prosecutrix and the witness of the Prosecution as elucidated and reproduced in the preceding paragraphs above, it can be easily perceived that the testimonies of the witness corroborate and supplement each other. The testimonies of the witness do not dither on either of the relevant and/ or material aspects. The facts and the circumstances of the case that the incident took place can be identified and distinguished in line line and the argument of the Counsel for the appellant fails as the testimonies are unfettered and unrebutted and corroborate each other well. It is a settled proposition of law that the testimonies of the witness(es) cannot be connoted as tutored on the aspect that they are akin to each other. True facts as and when they happen would always be stated by the witness(es) in their entirety and therefore would not take the aspect of them being tutored. In the present facts and circumstances, after going through the prosecution witnesses, exhibits and other materials and evidence, it becomes evident that the testimony of the prosecutrix was convincing and the corroboration of other witnesses is not required so far direct evidence is concerned and the sole testimony of the victim/prosecutrix inspires confidence. Testimonies of witness(es) being akin to each other is in itself conveys corroboration.
36. There is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the

prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative. The evidence of the prosecution witnesses is natural and trustworthy and corroborated by circumstantial evidence and the witnesses of the prosecution have been able to build up a continuous link.

37. Having done the survey of the evidence, it is amply clear that the ocular evidence, documentary evidence, medical evidence and more particularly, testimony of P.W.5, which is eloquent and self-explicit, connects the accused / appellant with the crime. Simultaneously, it cannot be overlooked that the appellant has committed heinous crime against a tender aged minor girl and not only caused physical harm, but also shattered the privacy, integrity and personality of the victim girl, and caused psychological harm to her, and degraded her very soul.
38. The Hon'ble Apex Court while dealing the case of ***State vs Karnataka Vs. Krishnappa, reported as AIR 2000 SC 1470*** has categorically observed that the following notions must be borne in mind by a Court of Law while adjudicating upon the quantum of punishment to be accorded to the accused; the relevant paragraph whereof is reproduced as under: -

".....The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the stage and age of sexually assaulted female and gravity of the criminal act.

Crimes of violence upon women need to be severally dealt with. Socio-economic, status, religion, race, caste or creed of the accused or the victim are irrelevant consideration in sentencing the policy. Protection of society and deterring the criminal is the avowed object of law that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in the heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection, therefore, imposition of proper sentence by the court....."

39. In the circumstances, having comprehensive view of the matter, and more particularly, after scrutinizing and re-appreciating the evidence on record, there is no infirmity in the impugned judgment and order of conviction.
40. As a result, present appeal stands dismissed, and the conviction and sentence imposed upon the appellant/accused, by the impugned judgment and order on sentence, stands confirmed.
41. Copy of the judgment be sent to the Superintendent Jail, Tihar for information and to be communicated to the appellant.
42. Trial Court record be also sent back.

SANGITA DHINGRA SEHGAL, J.

____ September, 2017
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