

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

% *Judgment Reserved on: August 11, 2017*
Judgment Delivered on: August 22, 2017

+ **CRL.A. 350/2017**

RAKESH KUMAR Appellant

Through : Mr.Harsh Prabhakar, Advocate
(DHCLSC) with Mr.Anirudh
Tanwar, Advocate.

versus

STATE Respondent

Through : Ms.Kusum Dhalla, APP for the
State with SI Pradeep Kumar,
PS Model Town.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant is aggrieved by his conviction for committing offence under Section 363 IPC & 6 POCSO Act, in the alternative under Section 376(2)(i) IPC and the order on sentence dated 9th December, 2016 whereby he has been sentenced as under:

- | | | | |
|-----|-----------------|---|--|
| (1) | U/S 363 IPC | : | to undergo RI for 5 years
with fine of ₹5,000/- and in
default of payment of fine, to
undergo SI for 30 days. |
| (2) | U/S 6 POCSO Act | : | to undergo RI for 10 years with
fine of ₹5,000/- and in default |

of payment of fine, to undergo
SI for 30 days.

No separate sentence was awarded to him for the offence punishable under Section 376(2)(i) IPC and all the sentences were ordered to run concurrently.

2. Criminal law was set into motion on receipt of DD No.21 dated 29th December, 2013 recorded at Police Station Model Town at 3:13 PM. As per this DD the wireless operator, control room, North Delhi informed through wireless set that a girl aged about five years has been raped at old Gupta Colony (House No. withheld), Model Town, Near Vijay Nagar. Police reached the spot but the child victim had already been removed to BJRM Hospital by the PCR van.

3. On medical examination of the child victim, she being subjected to sexual assault was confirmed. As the child victim was aged about four years, the mother of the child victim who saw her bleeding from her private part and tried to ask from her about the incident, made the statement Ex.PW-2/A on the basis of which FIR No.452/13 Ex.PW-3/A was registered.

4. On the basis of the information about the person who sexually assaulted the child victim, gathered from the child by her mother, the convict was arrested. He was sent for medical examination. After completion of investigation he was sent to face trial. He pleaded not guilty to the charge.

5. During trial, prosecution examined 23 witnesses. During examination under Section 313 Cr.P.C. the convict denied his involvement and claimed that his employer Doodh Nath (PW-8)

wanted to replace him with his brother-in-law and therefore he was falsely implicated in this case.

6. The learned Trial Court while disbelieving the defence plea taken by the appellant and by placing reliance on the school record proving the age of the child victim to be about four years and the testimony of the parents of the child victim as well PW-8 Doodh Nath, the employer of the convict duly corroborated by the medical record, held the convict guilty for committing the offence punishable under Section 363 IPC & 6 POCSO Act in alternative /376(2)(i) IPC and sentenced as above.

7. On behalf of the appellant Sh.Harsh Prabhakar, Advocate has filed the written submissions and in addition submitted that the testimony of the child victim could not be recorded by the Court either at the stage of investigation or during trial. He further contended that parents of the child victim are not witnesses to the occurrence. Rather the child was found sitting by her mother in sad state and she only thought that the child might have passed urine in her *pyjama*. The child was not screaming in pain or crying. Attention of this Court has also been drawn to the fact that the father of the child victim was present in the house and he had not noticed anything untoward till he was informed by the mother of the child that the child was bleeding from her private part. The improvements and contradictions made by the prosecution witnesses in their statement and the contradiction about scene of crime were put in tabulated form by the learned counsel for the appellant. He submitted that the evidence on record was not sufficient to prove the guilt of the convict beyond reasonable doubt. It

was also urged before this Court that absence of motive on the part of the complainant for false implication in itself is not sufficient to convict him as held in *Wasim Ahmed vs. State* in CrI.A.291/2016.

8. Learned counsel for the appellant has referred to the MLC Ex.PW-7/A wherein while giving the alleged history of sexual assault, the name of the convict has not been mentioned. The MLC records sexual assault by unknown person. Learned counsel for the appellant has also drawn the attention of this Court to the fact that as per the IO W/SI Sangeeta the convict was arrested at about 8:30 PM, however, PCR Form (page 239 LCR) reveals that the SHO visited the spot at about 1544 hrs. and had already apprehended the perpetrator. Thus, the investigation in this case is not fair and proper. Even the PCR call was made by one Dalchand and not by the father of the victim and Dalchand has not been examined by the prosecution. Possibility of rape being committed in the room where construction was going on was also very remote as it did not even have any door.

9. Learned counsel for the appellant has also pointed out the discrepancies in the testimony of the mother of the child victim and her father as to the time of occurrence, especially when PW-5 Ganga Singh has deposed that at about 12:00 pm he had seen his daughter playing with other children and PW-8 Doodh Nath testified that the child victim was having snacks brought by her brother. It has also been contended that the version of the child victim to her father was that the victim had been given beating though there was no external injury on her body.

10. On behalf for the State, learned APP has submitted that the victim of sexual assault in this case is a four year old child and her date of birth stands proved from the school record. The child could confide in her mother about the identity of the offender. The parents of the child PW-2 & PW-3 were not aware about the rape being committed till mother of the child returned from her job, who on seeing her condition, thought that she might have passed urine in her *pyjama*. While removing the *pyjama* she noticed that the child was bleeding from her private part.

11. Learned APP for the State has contended that the family had no enmity with the convict and would not have falsely implicated him in this case just because his employer wanted to employ his brother-in-law by removing the convict.

12. The contention raised on behalf of the appellant that merely because the family of the victim has no enmity with the convict is no ground to sustain the conviction is liable to be rejected. The decision of the Hon'ble Supreme Court in ***Wasim Ahmed vs. State*** in Crl.A.291/2016 has no application to facts of the instant case when the victim of rape is just four years old. Though there is no eye witness to the rape but testimonies of PW-2 Smt.Ranjan Devi (mother), PW-5 Sh.Ganga Singh (father) and PW-8 Sh.Doodh Nath have been held to be creditworthy. The relevant portion of the judgment reads as under:

“.....As regards the aspect of any enmity having been not established for PW 1 Nabi Ulla to falsely implicate the appellants, the reliance placed upon Lalla's case (supra) by the ld. Counsel for the appellants is well founded inasmuch as, if the testimony of a witness is

not reliable, conviction cannot be based merely for the reason that the witnesses have no enmity or reason to implicate the accused falsely. In the end, it may only be noticed that though, the chares, as framed, are not specific and distinct for the respective offences, it would suffice to say, these do not cause any prejudice to the accused-the appellants. More so, when this Court does not find favour with the impugned judgment of conviction and the order on sentence.”

13. Learned counsel for the appellant cannot draw any support by placing reliance on the above judgment for the reason that no motive has been attributed by the appellant for his false implication by the complainant whose daughter at tender age was raped. It is a matter of record that even in the MLC Ex.PW-7/A no name was mentioned. The information about the offender could be gathered only through the mother in whom the child victim confided. It has been proved from the statement of PW-4 Ramandeep Singh that the appellant was employed as Chowkidar by him. The appellant was seen taking the child victim by PW-8 Sh.Doodh Nath.

14. I agree with learned counsel for the convict to the extent that while preparing the MLC Ex.PW-7/A the convict was not named rather it was recorded to be by some unknown person. But that itself is not sufficient to discard the testimony of PW-2 the mother of the child victim in whom the child confided about the identity of the offender. On seeing her four year old daughter bleeding from her private part, may be she wanted her to be treated first instead of first searching for the offender and inquiring about his name. In a case of rape of a child of tender age, where she could neither understand the

nature of the act or could describe it, the Court has to be very sensitive in its approach.

15. The first aspect that is required to be considered in this case is the identity of the offender in view of the fact that the child victim aged about 4 years though produced for recording her statement under Section 164 Cr.P.C. as well for examination as PW-1, was not examined as a witness. The MLC of the child victim Ex.PW7/A records that she was brought by PCR Van and was accompanied by her mother Smt.Rajan Devi (PW-2). Alleged history of sexual assault as told by the mother has been recorded as under:-

'A/H/o of sexual assault has told by her mother, unknown person took the child girl from outside of her house around 11.00 am and brought back the child around 1.30 pm and left her (the child) at home. The child started c/o of pain abdomen and bleeding from genital area.'

16. PW-2 Smt.Rajan Devi in her complaint Ex.PW2/A has mentioned the following facts:-

(i) On 29th December, 2013 after she returned from her work at about 1.30 pm, she found her younger daughter 'K' inactive and shivering.

(ii) Initially she did not pay much attention to her but on noticing that neither she was playing nor moving, she questioned her about the matter and whether she has passed *susu* in her *pyjama*.

(iii) On being asked, her daughter 'K' told *'Buddhe (Doodh Nath) ke ghar jo uncle aaye hain wo mujhe lekar gaye the uncle ne meri pyjama uttari thi'*.

(iv) When PW-2 removed the *pyjama* of her daughter, she found her daughter bleeding and she informed her husband.

(v) Her husband then told that relative of Doodh Nath, who is working as Chowkidar of Building No.69 had taken the child 'K' with him and had given *kinnoo* to her.

(vi) PW-2 in her cross examination has stated that she did not know the convict.

17. In above circumstances, it was not possible for PW-2 Smt. Rajan Devi – mother of the child victim to name the offender by name at the time of preparation of MLC as she did not know his name before.

18. The child victim when produced for getting her statement recorded under Section 164 Cr.P.C., she was tried to be examined with the assistant and in the presence of her mother and during her questioning the child victim could only tell that the person who came to the house of *Buddhe* uncle gave her orange to eat and took her to his house. There he removed her *pyjama*, made her to lie down on the floor and gave beatings (*usne zameen par leta diya aur mara tha*). She also stated that '*susu se khoon aaya tha*' and thereafter he left her at her house. She informed her mother.

19. All these answers could be gathered from her by putting specific questions. A child of four years tried to describe the occurrence in presence of her mother in reply to specific answers at the stage of investigation as well.

20. PW-5 Sh. Ganga Singh - father of the child victim was working as Chowkidar and residing in the same building. He has stated about the child being taken by the convict as informed by Doodh Nath (PW-8) and left about 1/1½ hour. He has also stated that his wife informed him about the child bleeding from her private part and PCR being informed by him.

21. PW-8 Sh.Doodh Nath stated that he got the convict Rakesh appointed as a Guard in Property No.69 and the child victim being taken by him and left together after about an hour and ninety minutes. He has also stated that later on he was informed by PW-2 – mother of the child victim as to what the convict had done with her daughter.

22. In cross examination of PW-8 S.Doodh Nath, no suggestion has been given to him about the convict being falsely implicated as Doodh Nath wanted to appoint his brother-in-law in place of him which is the version of the convict in his examination under Section 313 Cr.P.C.

23. The contention of the appellant that the father of the child victim claimed that he informed the PCR whereas the informant is some Dal Chand, is not fully correct as in the PCR Form, it is recorded as under:-

*'DCR No. Received 44
Report Received from VAN
29/12/2013 15:20:21 CALL SATAYA HAI CALLER
GANGA SINGH S/O CHANADAN SINGH AGE 35 SAL
JO ABOVE ADD. PER CHOKIDAR HA NE BATAYA KI
MERI LADKI KHUSHI AGE 4 SAL KO PADOS ME
ANE WALE EK LADKE AGE KAREEB 30/32 SAL JO*

LADKI KO DIN ME 1100 HRS PER APNE SATH KHELANE KE LIYE LE GAYA THA LAEDKI CALLER KO 1330 HRS GHAR MILI HAI JO LADKI KO KHUD CHHOD KAR GAYA LADI KO BLEEDING HO RAHI HAI LE KAR HOSP. JA RAHE HAI.

C/ROOM INF. 29/12/2013 15:44:33 FROM O-11 SHO SAHAB MOKA PER AYE THE RAPE KARNE WALE O SHO SAHIB APNE SATH THANE ME PAHLE HI LE GAYE HAI 29/12/2013 16:06:01 LADKO KO BJRM HOS. ME D/CT HWALE HOS ME ADMIT IYA LADKI KE METHER AUR FATHER SATH E HAIL P. KE SAI SAI SANDEEP MOKA PER HAI C/ROOM INF.'

24. The contention raised about the time and place of arrest of the convict, no doubt the PCR Form records that the SHO arrived at the spot at about 1544 hrs. and had already apprehended the perpetrator but any irregularity in arrest of the convict, cannot be made a ground to acquit him.

25. There is no confusion about the crime scene as the convict himself disclosed and pointed out Property No.69 where he was employed as Chowkidar and committed the offence. The said premises was inspected by the Crime Team.

26. Learned Trial Court while convicting the appellant had rightly arrived at the conclusion that the child victim aged about four years old was taken by the convict and was seen by PW-8 Doodh Nath when he was taking her and by her father when she was brought back. The medical evidence proved that the child was sexually assaulted and the nature of the injury suffered by the child victim as recorded in the MLC Ex.PW-7/A proved that it was a case of penetrative sexual

assault on the child victim. The offence came to the notice only when the mother of the child victim removed her *pyjama* to check if she has passed urine in *pyjama* but found her bleeding from her private part. The MLC notes her condition and the injuries as under:

***“Bleeding from genital area
Under Garments stained with blood.
Both inner thighs blood stained
Small Perineal tear seen (1x1 cm)
Hymen Torn”***

27. From the testimony of the mother child victim it stands proved that when she returned from her work, seeing the condition in which the child victim was sitting, she only suspected that she might have passed urine in her panty/*pyjama* but when she removed the panty/*pyjama* and on seeing her bleeding from her private part, she made inquiries from her daughter. The child victim told her that the uncle who has come to the house of their neighbour *Budhe uncle*, (PW-8) Doodh Nath, had taken her and had also given a Kinnoo while taking away to his house and that the said uncle took her *pyjama* and made her lie on the bed. It is relevant to note that PW-1 the child victim ‘K’ (name withheld), aged about 4 years was produced before the Court for her examination. The Court questioned her at length to examine her capability to understand the questions and to answer them. After questioning her in detail as under, learned Trial Court was of the view that she was not a competent witness and could not be examined:

IN CAMERA PROCEEDINGS

PW-1 Statement of 'K' (name withheld) D/o Shri Ganga Singh, aged 4 years, R/o xxx (address withheld).

At this stage, to find out whether this child witness is a competent witness, capable of giving rational answers to the questions put to her, some preliminary questions are being asked to her to find out her competency to depose in the Court.

Question : What is your name?

Answer : 'K' (name withheld)

Question : What is your father's name?

Answer : Ganga Singh

Question : What is your mother's name?

Answer : Rajan Devi.

Question : What is your brother's name?

Answer : Shivam

Question : Do you go to school?

Answer : Yes

Question : In which class you are studying?

Answer : Nursery

Question : What is the name of your school?

Answer : Nursery

Question : By which mode you are going to your school?

Answer : I go to my school by foot.

Question : What is name of your teacher?

Answer : I do not know.

Question : Can you tell the name of your any of friend?

Answer : I do not know.

Question : What do you study in your school?

Answer : Nothing.

Question : Do you only play in school?

Answer : Yes.

Question : What do you play?

Answer : Nothing.

After making the aforesaid preliminary examination of the above said child, I am satisfied that the child is not capable of understanding the question put to her and she is not capable of giving rational answers to the questions put to her. Therefore, I am satisfied that she is not a competent witness. Hence, she is not being examined as a witness.

Sd/-

ASJ-01:NORTH:ROHINI:DELHI

05.05.2014”

28. It is clear from above that she could tell her name, her parents, brother as well her class. Thus, in a position to tell her mother as to who has done what to her. It is a case where the child victim has not been withheld by the prosecution. But because of her tender age she could not be examined by the Court. The question that arises for consideration in this case is whether in the absence of testimony of the

child victim, the learned Trial Court could have convicted the appellant for the offence under Section 363 IPC & 6 POCSO Act by relying on the statement made by the parents of the child victim who had seen her hours after the occurrence had taken place.

29. In decision reported *Sayed Pasha vs. State of Karnataka* (2004 CriLJ4123 the victim of rape was a four year old child but was 13 years old at the time of trial. She was not examined as prosecution witness and the conviction was based on circumstantial evidence. The question that arose for consideration was the effect of non-examination of the child victim. The prosecution relied on the testimony of the mother of the child victim who stated the facts in what condition she saw the child i.e. bleeding from her private part, on the medical evidence as well the witness who had noticed the child coming from the side of flour mill while bleeding from her private part. The contention raised on behalf of the convict was that non-examination of the witness is fatal to the prosecution case. Rejecting the said contentions it was held as under:

“23. The next contention of the learned counsel for the accused is that non-examination of the victim is fatal to the prosecution case. It is to be borne in mind that the evidence adduced by the prosecution clearly shows that at the time of the incident, the child was aged about 3 to 6 years. Hence, the age of the child can safely be taken as 4 to 5 years. The Court has to take into consideration the mental capacity of the child to recollect what had happened when she was aged about 4 or 5 years and whether she could (be) able to identify the person who committed the heinous crime on her or is the child in a position to say about the sexual act committed on her,

when the child is not aware of such acts, that too when she was in the age group of 13 to 14 years at the time of recording of evidence before the Court below. If Umashri were to have put in the witness box at that stage, it may not be possible for her to recollect what had taken place when she was aged 4 or 5 years. Therefore, the non-examination of the victim does not go to the root of the prosecution case.

24. Section 375 IPC reads thus :

375. *A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :*

First - Against her will

Secondly - Without her consent

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt;

Fourthly - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation : Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception : Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

(Emphasis is supplied)

The two essential requirements of Section 375 are: (i) sexual intercourse by a man with a woman; and (ii) such sexual intercourse must be under any of the six clauses mentioned in Section 375 IPC.

In the present case, the child of the age of 4 to 5 years was subjected to rape. It comes within Clause-6 of Section 375 IPC. It is also clear from the explanation to 'sexual intercourse', merely penetration is sufficient. It is no doubt true that in so far as PW-6 witnessing the accused committing rape by taking the child on his lap was not stated in the examination-in-chief. When the prosecution treated her as hostile and cross-examined, PW-6 has categorically admitted that on 9-1-1990 at about 11 a.m. PW-1 Venkatesh informed her that her daughter Umashri was crying near the flour mill of the accused and asked to go and see what was the matter. This portion of the evidence is fully corroborated by PW-1. In so far as the second portion of the evidence is concerned, to the effect that immediately she went to the flour mill of the accused and saw the accused committing rape on Umashri by making Umashri to sit on his lap, after pushing her underwear down and that Umashri was weeping and crying. This is stated by PW-6 when the prosecution cross examined her by treating hostile.

Judicial pronouncements of the Apex Court and various other High Courts, in so far as appreciating the evidence of hostile witnesses is concerned, laid down that when a witness is declared hostile, his /her evidence cannot be relied on. It is also laid down that when once a prosecution witness is declared hostile, his version cannot be treated as the version of prosecution. If any part of the evidence of the hostile witness is found true, the Court can rely on such part of the evidence.

The testimony of PWs-1 and 6 is so consistent that they heard the cry of Umashri from the side of the flour mill of the accused and immediately PW-1 told PW-6 to go and see what had happened, PW-6 going out she found bleeding from the vagina of Umashri and her underwear was pulled down. This piece of evidence is truthful and reliable, though the same has not been stated in the examination-in-chief, it has come in the cross-examination done by the prosecution, which has credence and also testifies and corroborates the evidence of PW-1. It is thereafter, the child was taken to the clinic of PW-9 Dr. Ashok Kumar, treated by his wife Dr. Lalithamma (PW-10). PW-10, on noticing the bleeding on the vaginal part of Umashri and blood stains on the clothes, suspected it to be a medico-legal case and asked PW-6 to go to police station. It is thereafter, PW-1 on the next day morning went to the police station and lodged the complaint, directly point to the guilt of the accused. Mere non-presence of semen stains, spermatozoa and gonococci itself is not a ground to reject the testimony of prosecution witnesses, including the evidence of PWs-1 and 6 and the medical witnesses.

25. In the case of Nagam Gangadhar v. State MANU/KA/0177/1998, while considering a similar situation, where a child of 4 years was raped, the Supreme Court, in para 10 of its judgment, observed thus :

"It is then contended that PW-3 is a child witness and no importance can be attached to that evidence. It is true that the evidence of PW-3 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 my view, sufficient to bring home the guilt of the revision-petitioner."

In the decision in supra, the victim-child was examined, but in the present case, the victim has not been examined. Nevertheless, the child (Umashri) informing her mother as to who did the act is held to be admissible, which points to the guilt of the accused.

Section 60 of the Evidence Act stipulates that the oral evidence must be direct, that is to say, the fact to be proved could be seen, heard, touched, tasted and/or smelt. The testimony should be one of the said it, heard it, touched it, tasted it or smelt it. In the case on hand, the child telling her mother, when enquired 'Pasha' is a circumstance which has to be taken into account in considering the overall testimony of other prosecution witnesses, including the investigating officer, who recorded the statements of witnesses at the earliest. It is to be noted that Section 60 of the Evidence Act does not preclude from considering the circumstantial evidence of things that could be seen, heard or felt. Even taking into its extreme, elimination of mentioning the name of accused by the child, the other circumstances point to the guilt of the accused. It is elicited in the cross-examination of PW-6 that the accused, used to take the child to his arms and that he was playing with her. This

itself shows that there was acquaintance with the child by the accused, who used to play with her.

26. It is the settled principle that where a rape has been committed on a child of tender age, there is no rule of law requiring corroboration from an independent source of evidence of the child as to the identity of the accused. The examination of the child or otherwise does not make any difference, when the fact is taken note of that the child was just aged about 4 or 5 years at the time of committing the crime and could not have expected to examine the child so as to recollect the memory of the worst incident took place in her life. When it involves dignity and honour of the child and her family, it cannot be expected that a child of such a tender age to step into the witness box and depose the facts.

30. Reverting to the evidence appearing against the appellant, it has come on record that the convict was seen taking away the child victim as well leaving her back at her house. The father of the child victim though present at home was busy in his work and failed to notice the condition of the child. PW-2 Rajan Devi, mother of the child victim who was working as maid servant in various kothis in the nearby residential area, on her return could sense the sad mood of the child and without suspecting that she could be sexually abused by someone, as a mother removed her panty/pyjama to see whether she has passed the urine but noticed her bleeding from her private part which fact has been duly recorded in the MLC Ex.PW-7/A.

31. It is a matter of common knowledge that the victims or their relatives are not too keen to bring on record the culprit of sexual assault due to the social stigma attached to such crimes. The evidence of a victim of such offence or of witness of circumstances is entitled to

great weightage for the reason that the parents of the victim or the victim himself are reluctant to approach the police in view of the prevailing norms of the Indian society.

32. It is inconceivable that the parents of a small child of tender age would concoct false story just to implicate him without any motive or enmity.

33. Certain discrepancies which have been highlighted in form of a chart by learned counsel for the appellant cannot be attached much importance for the reason that in regard to exact time of incident or the duration during which the child victim remained with the convict, are mainly on the basis of estimation. As the family of the victim is illiterate, belong to labour class, they cannot be expected to be making precise estimates in this regard. The discrepancies which do not go to the root of the matter cannot be attached undue importance by this Court. The testimony of the mother of the child victim is inspiring confidence as to what the child had confided in her on the basis of which the identity of the offender was established.

34. In the instant case though the child victim has not been examined because of her tender age nevertheless her informing to her mother as to who did the act by describing that '*Buddhe (Doodh Nath) ke ghar jo uncle aaye hain wo mujhe lekar gaye the uncle ne meri pyjama uttari thi*' is admissible in evidence and testimony of PW-2 Smt. Ranjan Devi (mother), PW-5 Sh. Ganga Singh (father) and PW-8 Sh. Doodh Nath is sufficient to hold the appellant guilty for commission of rape.

35. For the foregoing reasons the appeal has no merits and the same is hereby dismissed.

36. The appellant be informed about the order through the concerned Jail Superintendent.

37. LCR be sent back along with copy of this order.

**PRATIBHA RANI
(JUDGE)**

AUGUST 22, 2017
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