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

+ **CRL. L.P. 474/2017**

% *Date of Judgment: 13th September, 2017*

STATE (N.C.T OF DELHI)

..... Petitioner

Through: Ms. Radhika Kolluru, APP for the
State along with Inspector Devendra
Singh Oberoi, P.S. Nangloi

versus

RAMPHAL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

CRL.M.As. 13510/2017 (delay) & 13511/2017(delay in refiling)

1. These two applications are filed by the petitioner seeking condonation of 75 days delay in filing the leave to appeal and 404 days delay in refiling the appeal. Although, Courts have been liberal in condoning the delay in filing the leave to appeal and particularly in refiling, but in this case there has been inordinate and unexplained delay of 404 days in refiling the appeal. We do not find sufficient grounds to condone the delay in refilling the leave to appeal, however, since we have examined the case on merits, delay of filing the leave to appeal and refiling are condoned.
2. The applications stand disposed of.

CRL. L.P. 474/2017

3. The present leave to appeal has been filed by the State under Section 378 (3) of the Code of the Criminal Procedure, 1973 ('Cr.P.C.') against the impugned judgment dated 05.12.2015 passed by the learned Trial Court in Sessions Case No. 53/13 arising out of the FIR No. 162/2011 registered at Police Station Nangloi under Section 376 of the Indian Penal Code ('IPC'), by virtue of which the respondent has been acquitted.
4. The case of the prosecution, as noticed by the Trial Court, is reproduced as under:

"1. Brief facts of the case of the prosecution are that the accused Ramphal is charge-sheeted by the police of PS Nangloi for the offence punishable U/S 376 of IPC, as the FIR in the case in hand has been registered on the basis of the statement of the prosecutrix 'N' (presumed name of prosecutrix. The real name of the prosecutrix is withheld to protect her identity). The prosecutrix has alleged in her statement recorded by the police on 08.06.2011 which is Ex.PW1/A that she is 14 years of age. She lives with her parents and studies in 6th class. When, she was 6/7 months of age. The accused who is maternal uncle of the prosecutrix adopted her, as he was not having any child and when his son was born, then, the accused started beating to the prosecutrix and she started living in the house of her parents and further alleged that on 22.05.2011 at 4.00pm, Rohit i.e. son of her maternal uncle, (i.e accused) had come to the house of the prosecutrix and her mother had asked him the reason for weeping and master Rohit told that he has been beaten by the children and his mother had gone to the village to attend some condolence and Rohit asked to the prosecutrix to go the house of the accused for cooking the meal and also cleaning his house and the mother of the prosecutrix had send to the prosecutrix alongwith her sisters "P" and "B" who returned to their house, after leaving the prosecutrix in the house of the accused. She has further stated that the accused

came to his house at 11.00pm. She prepared BHUJIA of eggs and took the dinner together and slept and at about 1.00/1.30am the accused started doing GALAT HARKAT with the prosecutrix and removed her SALWAR and when she resisted and cried, then, the accused put a cloth on her mouth and pressed the same. So she could not cry and the accused raped to the prosecutrix and in the meantime she became unconscious and she regained her consciousness at 9.00am in the next morning and she went to her house and apprised to her elder sister and they did not tell to any person in view of fear of damage to their reputation and in view of pressure of the relatives and after due deliberation they have dialed 100 number on 07.06.2011.

2. On recording of such statement of the prosecutrix on dated 08.06.2011 the FIR no.162/11 was registered on dated 08.06.2011 and she was medically examined her the statement U/S 164 of Cr.P.C was recorded and the accused has surrendered in the court on dated 08.06.11. On completion of the investigation the charge-sheet was filed U/S 376 of IPC and on finding of the prima- facie case, the charge U/S 376 of IPC was framed against the accused, to which the accused pleaded not guilty and claimed trial.”

5. To bring home the guilt of the respondent, the prosecution examined as many as 19 witnesses. The statement of the respondent was recorded under Section 313 of Cr.P.C whereby he stated that he was falsely implicated in the present case. The respondent had examined 2 witnesses in his defence.
6. Ms. Radhika Kolluru, learned counsel for the State submits that the impugned judgment of the Trial Court is contrary to the law and facts on record and the same is based on surmises and conjectures. The learned Trial Court erred in not appreciating the testimony of the child victim in the correct perspective. It is contended that there is no major

contradiction in her testimony. The testimony of victim is consistent and minor contradiction if any, cannot be a ground for acquittal of the respondent. She further submits that it has been repeatedly held by the Supreme Court of India that an order of conviction can be based on the sole testimony of a victim.

7. Learned counsel for the State contends that the MLC of the victim has revealed that the hymen of the victim was torn. However, the Trial Court has erred in acquitting the respondent ignoring the MLC on the ground that as there was no opinion as to whether the tear was fresh or old and also the fact that the victim was married on the day of occurrence which could be the possible reason for the same. Thus, it was prayed by the counsel for the appellant that in the absence of the opinion of the Doctor as to whether the tear in hymen was fresh or old, the respondent could not be given the benefit of the same.
8. Learned counsel for the State submits that the learned Trial Court has failed to examine the testimonies of material witnesses including mother, father and sister of the victim, in its correct perspective. It is also contended that the testimony of the victim is duly corroborated by the medical evidence.
9. Learned counsel submits that the delay of 16 days in lodging the complaint has been specifically explained and it is well-known that the parents are hesitant in making complaint of such a nature specially having regard to the status of the victim and her family. Lastly, it is submitted that the victim was raped by none other than the maternal uncle and it was prayed that the strictest punishment be given to him.

10. We have heard the learned counsel for the parties and considered their rival submissions.
11. Before dealing with the submissions made by Ms. Radhika Kolluru, we deem it appropriate to analyse the testimonies of some of the material witness including the victim (PW2), sister (PW10), mother (PW4) and father (PW5) of the victim.
12. The submissions of the learned counsel for the State can be summarized as under:
 - i) The statement of the victim is consistent;
 - ii) The MLC suggests tear of hymen;
 - iii) Conviction can be based on the sole testimony of the victim; and
 - iv) The delay of 16 days in lodging the FIR has been specifically explained;
13. As far as delay in lodging the FIR is concerned, it has been repeatedly held that in cases of such a nature, parents are reluctant to approach the police and thus, in our view, the delay of 16 days cannot be a ground by itself to acquit the respondent. At this stage, we deem it appropriate to examine the testimonies of three most important witnesses in this regard, i.e., PW1 (the victim), PW10 (sister of the victim), PW4 (mother of the victim), PW5 (father of the victim) and PW6 (Dr. Rashmi).
14. PW1, the victim, aged about 15 years at the time of deposition in Court testified that she cannot tell about the date and month of the incident and deposed that the incident probably took place in the year 2010, when she was studying in 6th standard and was residing with

her parents. PW1 further deposed that when she was about 6-7 months of age, she was adopted by the respondent (maternal uncle) duly identified by her in Court. But, when a child was born to him, the respondent and his wife started beating her and finally she came to the house of her parents and started living with them. PW1 was of 14 years of age at the time she returned to her parental home. It was further deposed by PW1 that the incident took place on Sunday and Rohit, who is the son of the respondent had come to her house and told her mother that his mother had gone to the village, as some death had taken place. Rohit asked her mother to send PW1 to his house. So that, she might clean the house and cook for them. At around 11:00 PM, the respondent came to his house. All the three persons had dinner together. Thereafter, they went off to sleep. It was further deposed by PW1 that on the night of the incident, the respondent slept with his son Rohit on a bed and she slept on a cot. At about 1.00 am in the night, the respondent came to her cot and tried to put off her salwar. She woke up and resisted his attempt but the respondent put a towel on her mouth and pressed it with his hands which made her unconscious. Thereafter, she did not know what happened with her. She woke up at 6.00 am, the next day and the respondent asked her to prepare tea. PW1 however told that she was going her house and left. On reaching home, the mother of PW1 asked her as to why her eyes were swollen. PW1 did not inform anything to her mother. Thereafter, her mother had left for her duty and her father also left for his shop. She made a call to her elder sister at about 9.00 am and told about the incident. Her sister called her father and narrated the entire incident and at about

10:00/10.30 am, her father came back and made enquiries from the victim about the incident however, she could not tell the same as the respondent had accompanied her father. She got frightened and became unconscious and regained her consciousness after about 2-3 hours when a doctor was called.

15. When PW1 regain her consciousness, she found her entire family there and in front of her family, she narrated about the incident. The respondent was called by her family members. The respondent came there, but did not say anything. Thereafter, the family members called the wife of the respondent. Next day, the respondent along with his wife was again called by her parents but he did not come. PW1 further deposed that the respondent tendered an apology for his conduct when he was called in the evening of the previous day. PW1 further deposed that she came to know about *galat kaam* being done by the respondent after she felt pain. PW1 again deposed that at the time she felt pain, the respondent had inserted his male organ into her urinal organ and thereafter, she became unconscious. It was further deposed by PW1 that the police was informed about the incident after 10-15 days of the incident as all the relatives told her parents not to report the matter to the police, as it was the matter of reputation of her family. The statement of the victim was recorded by the police and the same was proved by her as Ex.PW1/A. She also proved her statement recorded by the learned Metropolitan Magistrate as Ex.PW1/B. It was also deposed by PW1 that she got married on 17.09.2010 and had gone to her matrimonial home only once alongwith her sister who had also married in the same family. PW1 deposed that she did not have any

physical relation with her husband. With regard to the date and month of the incident, the APP in the Trial Court sought permission to ask leading question whereby she deposed that the incident took place on 22.05.2011 and her statement was recorded by the police on 07.06.2011.

16. In her cross-examination, PW1 categorically stated that she was living in the house of the respondent when she was of six months of age and stayed there till she attained 14 years. She categorically stated that the respondent never committed any such wrong during the said period. PW1 admitted that the respondent came at 9.00 PM and at that time; PW1 and Rohit were talking to the wife of the respondent (*mami*) on telephone. PW1 had gone to the Police Station 5-6 times where her statement Ex.PW1/A was recorded. PW1 also stated that she forgot to mention in her statement Ex.PW1/A that the respondent had come at 9.00 PM and left after taking tea. PW1 further stated that she had tried to raise alarm when the respondent started misbehaving with her. It was further stated that neither had she pushed the respondent nor she had tried to escape. It was voluntarily stated by PW1 that she tried to escape but the respondent had kept cloth on her mouth which made her unconscious. After she was unconscious, she was not aware as to what had happened with her. She regained her consciousness at 6.00 in the morning and had left for home at about 9.30 AM. PW1 admitted that she had refused her medical examination but, denied the suggestion that she had refused the same for the reason that no such incident had taken place.

17. It is also relevant to examine the testimony of the sister of the victim (PW10) as she was the first person to whom the victim had disclosed about the said incident. PW10 deposed that on 23.05.2011, she received a call from her younger sister who told her that the respondent (maternal uncle) had committed rape upon her on the night of 22.05.2011. She advised her sister to inform their parents; however, PW10 called her father and narrated the same to him. PW10 pleaded ignorance as to whether there was any complaint lodged to the police official with regard to the present incident. PW10 was cross-examined by the counsel for the State in the Trial Court whereby she denied the suggestion that initially there was no complaint made by her parents against the respondent, however, on 07.06.2011, the parents made complaint to the police or her sister was medically examined (confronted with the statement Ex. PW10/PX1 wherein it is so recorded). In her cross-examination by the counsel for the respondent, PW10 stated that the victim was adopted by the respondent when she was of six months old and was resided with him till date. PW10 also stated that her sister never told her about any such incident prior to the date of occurrence. It was further stated by PW10 that her sister had never gone to her matrimonial home and it was voluntarily stated by PW10 that since her '*gauna*' was not performed till date. PW10 further stated that her sister was not treated well by the wife of the respondent and made complaints to her several times. The parents of PW10 had gone to bring the victim to their house but the respondent and his wife did not allow them to bring the victim. On 23.05.2011 at about 10:30 AM, she received a call from the victim and thereafter,

she reached her parental home at about 1:00/1:30 PM. The victim was not taken to any hospital by PW10 and the victim did not make any call to the police in her presence on the fateful day.

18. PW4 (the mother of the victim) deposed that the victim is her younger daughter, aged about 15 years. When she was 6-7 months of age, she was given to her brother i.e. the respondent herein, as he was not having any child at that time. The respondent was living in her neighbourhood at that time. The respondent got admitted the victim in school and mentioned him as the father of the victim. It was further deposed by PW4 that the respondent and his wife started giving beatings to the victim thus; she did not want to live with the respondent. The victim was residing with her about 6-7 months prior to the incident. On 22.05.2011, the victim had gone to the house of the respondent and stayed there in the night of 22-23.05.2011. The victim had returned on the next morning at about 9.00 am. At that time, PW4 left for her duty but the victim did not tell anything prior to her leaving for duty. At about 11.00 am, her husband came to the factory and told her that the victim was not well and she was unconscious. Thereafter, she came back to her home after taking leave from the factory. The elder daughter of PW4 had also arrived in her house and told her that the victim had called her and narrated the incident of rape committed upon her by the respondent. Since all her relatives were living nearby, they had received the information about the offence and advised to lodge a complaint about the incident. On 07.06.2011, her husband called the police by way of dialing 100 number. In her cross-examination, PW4 admitted that the victim started residing with her

6-7 months prior to the date of incident; that the victim was adopted by the respondent when she was 6-7 months of age. PW4 again stated that her daughter was 8 month old at the time of her adoption. PW4 had also admitted that till her daughter attained the age of 13 years and before the present incident there was no complaint of any kind from the side of the victim against the respondent or any other person.

19. PW 4 further stated that she did not remember the exact date when her daughter had started living with her. However, she stated that it was about three years prior to her deposition in Court. Thereafter, the victim did not visit the house of the respondent. PW4 again stated that she had visited the house of the respondent only once post her marriage. It was also admitted by PW4 that in the month of December, 2009 her family members had sold the piece of land in her village Dabi near Patiala and she had also executed the relevant documents. However, PW4 stated that she did not receive money on account of the sale of that land and she had been given only travelling expenses for the same. PW4 denied the suggestion that the respondent had offered her money on account of the sale of that land, to which she had refused. PW4 further admitted that Juglal was her *nana* (maternal grandfather) and after the demise of Juglal, her mother had inherited his land; also admitted that she and the respondent are only children of Smt. Omni and she had sold her portion inherited in the land situated at village Kalayat on 27.07.2012. PW4 categorically stated that she did not make any enquiry from the respondent or his wife regarding the incident in question. PW4 also stated that she had not taken the victim to the hospital for her medical examination.

20. PW5 (father of the victim) deposed on similar lines as deposed by his wife with respect to the age of the victim and the fact that she was given to the respondent when she was 6-7 months of age. He deposed that the respondent was living in his neighbourhood. The victim had started living with them 6-7 months prior to the incident. On 07.05.2011, the son of the respondent namely Rohit came to his house and requested to send the victim to his house as his mother had gone to pay condolences to some relation. Thereafter, the daughter of PW5 went alongwith Rohit and stayed there in the house of the respondent on the night of 7/8.05.2011. His daughter returned on 08.05.2011 at 9.00 am. At that time he had already left for his duty. At about 10.30 am, his other daughter PW10 informed him about the incident whereupon he came back to his house immediately and found the victim in semi-conscious state. In the meantime, her elder daughter had reached to his home and informed the incident of rape committed upon the victim by the respondent. It was further deposed by PW5 that his relatives advised him to lodge the complaint about the incident. The brother of PW5 alongwith his wife had come to his house from Kurukshetra after about 12 days of the alleged incident. PW5 made a call at 100 number and informed the Police about the incident. Thereafter, police officials searched the respondent. As to the date of the incident, learned APP in the Trial Court had sought permission to ask leading question whereby PW5 admitted that the incident had taken place in the intervening night of 22/23.05.2011 and he called police on 07.06.2011. In his cross examination, PW5 stated that he as well as the respondent run barber shops and there was about 25-30

shops in between their shops. The respondent had got the victim admitted in the school and also used to bear all the expenses of the victim. PW5 admitted that the victim had not told anything about the incident to him. It was stated by PW5 that the first call to 100 number was made on 23.05.2011. PW5 stated that he is not aware about the contents of his statement recorded by the police. PW5 further stated that he had not enquired about the incident from the respondent. PW5 also stated that his elder daughter informed the present incident to her mother-in-law and her mother-in-law informed him on phone.

21. PW6 Dr. Rashmi had proved the MLC of the victim which was prepared by Dr. Asha. As per the MLC (Ex.PW6/A) the victim was examined on 07.06.2011 at 09.12 PM and there were no fresh external injuries on the body of the victim. Hymen was found to be ruptured. The victim had refused for her internal examination. With regard to the tear of hymen being fresh or old, there is no opinion and the counsel for the appellant was not given opportunity to cross-examine PW6 in the Trial Court.
22. The first submission of counsel for the State is that an order of conviction can be passed on the sole testimony of a victim. Though there is no quarrel with the proposition sought to be urged by counsel for the State that there is no bar in law to convict the respondent on the basis of the sole testimony of the victim, however, the Court must be satisfied that the testimony of the victim is of sterling quality and inspires confidence.
23. The Apex Court in *Rai Sandeep v. State (NCT of Delhi)*, reported at (2012) 8 SCC 21 reversed the conviction of the Trial Court and its

confirmation by the High Court finding contradictions in the testimony of the prosecutrix and that the same was inconsistent with the remaining evidence of the prosecution. While doing so, the Supreme Court examined as to when the prosecutrix can be called to be a “sterling witness” as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on

the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

(Emphasis Supplied)

24. We deem it appropriate to reproduce the relevant findings of the learned Trial Court. The relevant para 43 and 44 of the impugned judgment reads as under:

“43. No doubt that the MLC of the prosecutrix reveals that her hymen is ruptured but it is not mentioned in the MLC of the prosecutrix that whether her hymen is freshly ruptured. But as the prosecutrix is admittedly married girl, on the day of alleged occurrence and the prosecutrix has admitted that she had gone to her matrimonial home so the possibility of such rupturing of hymen in view of physical relation with her husband or for any other reason cannot be ruled out. Even otherwise, the report of the FSL Ex.PW19/C also does not go to support the case of the prosecution. It is admitted fact that the prosecutrix was adopted by the accused, when she was less than one year of age and the victim lived in the house of the accused till the age of 13 years. It is also admitted fact that during her long stay in the house of the accused, no such incident had ever taken place. The prosecutrix has alleged that she had cried at the time of alleged incident. But had she cried the son of the accused namely Rohit who was also sleeping nearby could awake. But master Rohit has not been examined and it appears to be improbable that a father would rape to a girl in the presence of her 11/12 years old son. So, the story of the prosecution appears to be not probable. The statement of the prosecutrix suffers from material contradictions, inconsistencies, improvements and embellishments therein and since, the accused was facing the charge of rape so, it was incumbent on the part of the prosecution to prove its case beyond any reasonable doubt that the accused had committed the offence U/S 376 IPC. The

prosecutrix is a minor girl of about 14 years of age and her testimony is not corroborated with any independent witness. The accused has taken the plea that in view of dispute of the property inherited by him and the mother of the prosecutrix from Ms. Omni who is maternal grand mother of the prosecutrix and mother of the accused the false case has been registered against him.

44. The accused has examined Sh. Ram Kumar as DW1 and Sh. Om Parkash as DW2 and both these defence witnesses have deposed that the father of the prosecutrix had threatened to falsely implicate to the accused in view of dispute of the property and it is worthwhile to mention here that PW4 who is the mother of the prosecutrix, has admitted during her cross-examination that she and the accused had inherited the property from Smt. Omni and also stated that she had sold away her share in the property of Smt. Omni on dated 27.07.2012 i.e. during the pendency of the present case. Thus, the dispute of property between the accused and mother of the prosecutrix is admitted fact and the mother of the prosecutrix has admittedly sold away her share in the property of Smt. Omni during the period of incarceration of the respondent in the present case. Therefore, in the absence of any independent and cogent evidence, the possibility of tutoring to the prosecutrix by her mother and false implication of the accused in view of the dispute of the property cannot be ruled out and in the absence of any corroborative evidence, it may be unsafe to rely upon the inconsistent, contradictory and embellished testimony of the prosecutrix who has been examined as PW1 and other prosecution witnesses.”

(Emphasis Supplied)

25. Coming to case at hand, the testimony of the victim fails the test of a sterling witness. The examination-in-chief of PW1 can be summarized as under:
- i) The victim first deposed that the respondent tried to put off her *salwar* and when she woke up and resisted, the respondent put a

towel on her mouth and pressed it with hands which made her unconscious. However, in the second version the victim deposed that she came to know about *galat kaam* being done upon her after she felt pain on insertion of male organ by the respondent into her urinal organ which made her unconscious;

- ii) It is difficult to believe that on reaching home, the next day at 9.00 AM, the victim did not disclose anything to her mother and father but had called her married sister who in turn informed the father of the victim;
- iii) As per the testimony of victim, she gain consciousness at 6.00 AM on the next day but returned her parental home at about 09.00 AM, there is no explanation as to why she had reached after a delay of 3 hour, more particularly, when the respondent was residing in their neighbourhood shows a conduct which is against the natural behavior of the human being;
- iv) The victim was married and had recently visited her matrimonial home.

26. The victim made following improvements in her cross-examination which read as under:

- i) The victim stated that in her statement to the police, Ex.PW1/A, she forgot to mention that on the fateful day, the respondent came at 9.00 PM and after having tea, he left after taking tea;
- ii) PW1 tried to raise alarm when the respondent started misbehaving with her; however, she did not try to push the respondent or even tried to escape from the house of the respondent.

27. On careful reading of the testimony of PW1, we are of the view that the testimony of the victim is not believable and also contradicts with the other evidence adduced by the prosecution. It is noteworthy to mention that there is no evidence with regard to the misbehaviour of the respondent during the period, the victim stayed at the house of the respondent. It clearly shows that the respondent treated her like a daughter and paid for all her expenses including school fee. In this background, solely relying upon the testimony of the victim will be a dangerous proposition correctly repelled by the Trial Court.
28. Even the testimony of PW10 (sister of the victim) is not reliable. As it has emerged in her cross-examination that the victim was adopted by the respondent when she was of six months old and was resided with the respondent even on the day of occurrence. PW10 also stated that her sister had never gone to her matrimonial house since her '*gauna*' has not been performed yet. From the evidence extracted above, the victim was married in the same family where her elder sister was already married and if we believe the testimony of PW10, the victim had never visited her matrimonial home. In this background, we find the testimony of PW10 not reliable as all the other prosecution witnesses deposed in one voice that the victim had returned to her parental home 6-7 months prior to the date of the incident and had visited the matrimonial home.
29. After reading the testimony of PW4 (mother of the victim), the respondent got admitted the victim in school and mentioned him as the father of the victim. In her cross-examination, PW4 stated that she did not remember as to when her daughter had started living with them but

again stated that it was about three years prior to her deposition in Trial Court.

30. On reading the evidence of PW5 (father of the victim), it is clear that the respondent got her admitted in school and always paid all her expenses. As per his testimony, the incident took place on the night of 7-8.05.2011 and his daughter had returned on 08.05.2011 at 09.00 AM. With regard to the date of the incident, learned APP for the State in Trial Court cross-examined him, whereby he stated that the incident took place on 22-23.05.2011 and he made a call to the police on 07.06.2011. However, it was again stated by him that the first call was made to the police on 23.05.2011. PW5 further improved his version that her elder daughter (PW10) had first informed to her mother-in-law and mother-in-law in turn informed him on phone. In view of the different versions made by PW5, his testimony is not believable and cannot be relied upon to convict the respondent.
31. To conclude, the testimony of the victim is contradictory on vital aspects and itself belied by the other prosecution evidence. The medical evidence also shows that the hymen was torn; however, there was no opinion of the Doctor with respect to the tear was fresh or old. We concur with the finding of the Trial Court that it is improbable that the respondent would have committed rape upon victim in the presence of his son, who was 11-12 years of age and was sleeping on the same bed with his father on the fateful night. Non-examination of Rohit by the prosecution further weakens the case of prosecution.
32. Even otherwise, it is settled law that the Appellate Court may only interfere in an appeal against acquittal when there are substantial and

compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].

33. Accordingly, we find no illegality or infirmity in the judgment of the Trial Court warranting interference. The present leave petition is dismissed.

G.S.SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 13, 2017

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