

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :12.11.2018

Date of decision :05.12.2018

CRL.A 378/2017

BILLO

..... Appellant

Through: Ms. Aishwarya Rao, Advocate.
(DHCLSC).

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Aashaa Tiwari, APP for
State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant/applicant Billo s/o Sh. Siya Ram Singh vide the present Criminal Appeal No. 378/2017 assails the impugned judgment dated 23.12.2016 and the impugned order on sentence dated 26.12.2016 of the Court of the learned Additional Sessions Judge–Fast Track Court (East), Karkardooma Courts, Delhi in Sessions case no.1508/16 in relation to FIR No.251/14, PS Jagatpuri which was registered under Sections 376(2)(f)/376(2)(n)/506 of the Indian Penal Code, 1860 in relation to which the appellant herein was convicted by the learned Trial Court and sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.3,000/- and in default thereof to undergo Simple Imprisonment for a period of

30 days for the offence punishable under Section 376(2)(f) of the Indian Penal Code, 1860; that the appellant having been sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.3,000/- and in default thereof to undergo Simple Imprisonment for a period of 30 days for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860; with the appellant having also been sentenced to undergo Rigorous Imprisonment for a period of one year for the offence punishable under Section 506 of the Indian Penal Code, 1860, with all sentences having been directed to run concurrently with the benefit of Section 428 Code of Criminal Procedure, 1973.

2. The learned Trial Court also directed the State Legal Services Authority to determine an appropriate compensation to be paid to the victim/prosecutrix in terms of Section 357(A)(3) of the Cr.P.C., 1973 in terms of the notified Delhi Victim Compensation Scheme, 2011. The appellant was produced pursuant to the production warrants on 27.08.2018 and as per the nominal roll received from the Deputy Superintendent, Central Jail-03, Tihar, Delhi as on 16.08.2018, the appellant is indicated to have undergone 4 years 3 months and 20 days of incarceration with remission earned of 4 months and 26 days with the fine indicated to have not been paid and the unexpired portion of the sentence being 5 years 3 months and 14 days on the said date i.e. 16.08.2018.

3. The charge of allegations framed against the accused since convicted i.e. the present appellant on 06.01.2015 was to the effect

that on 17.04.2014 at about 12.00 pm and on 18.04.2014 at House No.69, Gali No.29, South Anarkali, Gurudwara Gali, Delhi within the jurisdiction of PS Jagatpuri, the accused since convicted being uncle (Mausa) of the prosecutrix, repeatedly committed rape on the prosecutrix aged about 18 ½ years against her will and consent and also threatened to kill her if she reported the incident to anyone and thus criminally intimidated her and committed offences punishable under Section 376(2)(f) and Section 376(2)(n) of the Indian Penal Code, 1860 read with Section 506 of the Indian Penal Code, 1860, to which charge of allegations, the accused/appellant herein had pleaded not guilty and claimed trial.

4. The charge-sheet in the instant case indicates that on 25.04.2014, the prosecutrix (P) aged 18 ½ years accompanied her aunt(Y) i.e. her mausi to the police station and got her complaint registered to the effect that she was a permanent resident of Jabalpur, Madhya Pradesh and had come to her maternal aunt's (Y) house a few days before so that she could visit the city and that she also used to accompany her aunt (Y) in doing the domestic work of cleaning in houses.

5. As per the prosecution version set forth through the FIR, the accused/appellant herein named Billo used to do the work of POP and on 17.04.2014, her mausa i.e. the accused/appellant herein told her not to go for the work or she would get into the bad habit of eating pan supari and thus her aunt (Y) left for work and the son of her aunt (A) had also gone for work and his sister (B) had gone to school and she

the prosecutrix (P) and her uncle named Biloo were alone at home and that she was cleaning utensils and thereafter went for a bath and at that time her uncle i.e. the accused/ appellant herein entered the bath room making an excuse that he wanted to take water and that she objected to the same on which her uncle told her not to make any noise and that he would give her Rs.1000/- and would give Rs.5000/- to her mother and would get her new shoes and chappals and that she should do whatever he asked her to do so and told her to do as he said and her uncle came out of the bath room and after she bathed she wore her clothes and came out of the bath room and her uncle i.e. the accused/appellant herein asked her to come and lie down on a Chatai (Mat) and when she refused to do so, he caught hold of her and made her lie down on the floor and put her chunni into her mouth and with his legs he pressed her hands and kept fondling her breasts with his hands and then opened the Naada (string) of her salwar and took it off and forcibly put his penis into her vagina and thereafter left her alone in the house and went out of the house and before leaving the house he also threatened her to keep her mouth shut or else he would kill her.

6. As per the FIR, the prosecutrix (P) is indicated to have stated that her uncle i.e. the accused/appellant herein was a very cruel man and also used to beat her maternal aunt (Y) and their children mercilessly. As per the FIR, the prosecutrix (P) further reported that because of the acts of her uncle i.e. the accused/ appellant herein she was in a state of fear and on 18.04.2014 her uncle i.e. the accused/appellant herein on finding an opportunity after her maternal

aunt (Y) and her cousin brother and sister had left, again had sexual intercourse with her and she being very afraid of the acts of her uncle i.e. the accused/appellant herein did not tell anyone of the same but on that day i.e. on 25.04.2014, she picked up the courage and told her maternal aunt (Y) about everything and her aunt (Y) brought her to the police station and then she told everything to the police in the presence of her aunt (Y) and her statement was recorded. As per the charge-sheet on the basis of the statement of the prosecutrix (P), the FIR was registered under Section 376(2)(f) and Section 506 of the Indian Penal Code, 1860.

7. The medical examination of the prosecutrix (P) was got conducted at LBS Hospital through ASI Sunita. The statement of the maternal aunt (Y) of the prosecutrix (P) was also indicated to have been recorded and as she had no documentary proof of age, the bone age X-Ray of the prosecutrix was also got conducted. The accused/appellant herein was taken into custody on 26.04.2014 and samples collected during the medical examination of the prosecutrix (P) and the accused/appellant herein were deposited in the Malkhana.

8. In support of the prosecution version, the State cited and examined its 16 witnesses. It was held by the learned Trial Court vide the impugned judgment that the charge of allegations levelled against the accused/appellant herein (uncle of the prosecutrix) established that the accused/appellant herein had committed acts of sexual intercourse with the prosecutrix (P) on 17.04.2014 and 18.04.2014 by force and without her consent and that the accused i.e. the appellant herein had

also threatened to kill her after the acts of commission of rape upon her.

9. Through the present appeal and submissions made on behalf of the appellant by the learned counsel from the Delhi High Court Legal Services Committee, Ms. Aishwarya Rao, it was contended that the charge of allegations framed against the accused/appellant herein were not proved nor established even remotely. It was also submitted on behalf of the appellant that there were contradictions and variations in the testimonies of the prosecutrix (P) examined as PW-3 and PW-5 Ms. Y i.e. the maternal aunt of the prosecutrix as to the date when the aunt (Y) of the prosecutrix was informed by the prosecutrix of the alleged incidents of the dates 17.04.2014 and 18.04.2014 and whereas the prosecutrix stated that she had informed her aunt i.e. PW-5 after 2/4 days of the incident of rape committed on her, her aunt (Y) had stated in her cross-examination that the prosecutrix had told her about the commission of rape on her person by the accused/appellant herein in the evening of 17.04.2014 for the first time and that she, the aunt (Y) of the prosecutrix (P) did not lodge any report to the police on 17.04.2017 nor did she so report about the same to the police by the prosecutrix (P) and despite the alleged second rape on 18.04.2014 by the accused/appellant herein on the prosecutrix (P) there was no reporting of the FIR till date 25.04.2014. It was also contended on behalf of the appellant that there was no medical evidence to prove that the prosecutrix (P) had been subjected to any sexual assault by the appellant nor was there any FSL report to show the involvement of the

appellant with the offence in question or to prove that the prosecutrix was subjected to rape by the appellant. *Inter alia* the appellant contended that the facsimile of the seal used in sealing the seized articles had not been taken on any of the documents e.g. Seizure memos etc. nor was the seal handed over to any person through any seizure memo and nor was the same deposited with the MHC(M) of the police station. It was further contended on behalf of the appellant that the learned Trial Court had failed to appreciate that the scientific evidence does not corroborate the story of prosecution and that there were no efforts made by the prosecution to ascertain the presence of the *Smegma* on the *glans penis* of the accused/appellant herein and reliance was placed on behalf of the appellant on the verdict of the Hon'ble High Court of Orissa in "**A. Kamartaju Patro Versus State of Orissa (1991 CrL. L.J.) 2009**" with specific observations therein to the effect:-

"the Smegma Test of the accused is a sure and infallible test to determine whether the male agent in the offence of rape had actually committed sexual intercourse or not and in absence of such test for the want of medical examination of the Petitioner/Convict, it is submitted that the Petitioner/Convict cannot be said have committed the offence of rape."

10. *Inter alia* it was submitted on behalf of the appellant that the appellant had not received a fair trial and that his conviction could not be sustained and that the extreme penalties imposed by the learned Trial Court ought to be set aside. It was also submitted on behalf of the appellant that no fair opportunity was given to the accused/appellant herein to defend his case properly and even the

Amicus Curiae provided to the appellant did not render proper assistance in a manner to properly contest the case and most of the relevant questions which ought to have been put to the witnesses, were not asked to the witnesses during cross-examination. It was also submitted on behalf of the appellant that there was no bleeding after the alleged incident of rape on the prosecution and no injuries on her person which also negate the commission of the offence of rape *inter alia* the appellant contended that the testimony of a child witness has to be gauged with caution and reliance was placed thus on the verdict of the Hon'ble Supreme Court in **“Nivrutti Pandurang Kokate & Ors. Vs. State of Maharashtra, AIR 2008 SC 1460”**, wherein there were observations to the effect:-

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shapes and molded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

11. *Inter alia* it was submitted on behalf of the appellant that the learned Trial Court did not frame any opinion as to whether the child witness has the requisite intelligence to depose and whether she was tutored or not and that the appellant was convicted on the sole testimony of the prosecutrix which itself does not inspire confidence and appeared to be tutored. It was further contended on behalf of the appellant that the prosecution story was thoroughly inconsistent and illogical and that the learned Trial Court erred in granting benefit of doubt to the appellant as the prosecution has not been able to discharge its burden. It was thus submitted on behalf of the appellant that the appellant was liable to be acquitted.

12. On behalf of the State, learned Additional Public Prosecutor for State Ms. Aashaa Tiwari contended that the statement of the prosecutrix stood corroborated through the statement of the aunt (Y) of the prosecutrix i.e. PW-5 to the extent that the prosecutrix had disclosed the incident to her aunt (Y) and that thereafter she, the aunt (Y) of the prosecutrix along with the prosecutrix (P) had gone to the Police Station Jagatpuri and got the FIR Ex. PW3/C registered against the accused/appellant. It was also submitted on behalf of the State that the accused/appellant herein was the husband of PW-5 and that the parents of the prosecutrix would have sent the prosecutrix to Delhi based on their trust but in view of the incident that took place, the same would have placed PW-5 in a substantial dilemma and even presuming that PW-5 came to know what incident on the date of the incident, the delay of one week in the registration of the FIR was itself

no ground to disbelieve the case of the prosecutrix.

13. Reliance was thus placed on behalf of the State on the verdict of the Hon'ble Supreme Court in **“State of Punjab & Ors. Vs. Gurmeet Singh” 1996 (2) SCC 4384**, on the verdict of the Hon'ble High Court of Himachal Pradesh in **“State of Himachal Pradesh Vs. Sanjay Kumar @ Jimmy”** a judgment dated 15.12.2000 CrI A. 1231/16 in which the **delay of three years was condoned**. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in **“Satpal Singh Vs. State of Haryana” 2010 (8) SCC 719** in which the delay of four months in reporting the matter to the police was not considered very significant. It has been submitted on behalf of the State that pursuant to the incident of rape and the medical examination of the prosecutrix (P) would have taken a bath and attended to the calls of nature and the absence of semen in the samples from the body of the prosecutrix (P) cannot be considered very significant and that the absence of injuries on the body of the prosecutrix (P) is also of no consequence. It has also been submitted through the written submissions of the State that at the time of the incident, the prosecutrix (P) was 18 ½ years of age and that she was alone in the house of the accused which was far away from her native place which itself indicated that she would not have been in a position to offer resistance to the accused/appellant herein and furthermore, the FIR itself indicated that the accused/appellant herein had been beating his wife and his children.

14. The verdict of the Hon'ble Supreme Court in **“Radhu Vs.**

State of M.P.” 2007 CrI. J. 4704 categorically lays down to the effect that a finding of guilt in a case can be based on uncorroborated evidence of the prosecutrix and the very nature of the offence made it difficult to get direct corroborative evidence and that the evidence of the prosecutrix ought not to be rejected on the basis of minor discrepancies and contradictions and where a victim states on oath that she was forcibly subjected to sexual intercourse, her statement would ordinarily be accepted even if it is uncorroborated and it is was also contended on behalf of the State that it is well settled that the absence of injuries on the private parts of the victim do not *ipso facto* falsify a case and that the same cannot be construed as evidence of consent and that further the opinion of a doctor that there was no evidence of any sexual intercourse or rape is also not sufficient to disbelieve the accusation of rape on the victim.

15. Ex.PW1/A, the MLC of the prosecutrix prepared at LBS Hospital, Delhi reports the history to the effect:-

“brought by police for medical examination.

Alleged H/o sexual assault by mausa (Billu 8 days back twice. Billu threatened her that if she tells it to anyone he will kill her. H/O physical & sexual assault”,

it was also indicated through the same that there were no external marks of injuries.

16. The prosecutrix PW-3 was examined in the Vulnerable Deposition Room no.78 at Karkardooma Courts, Complex, Delhi on 08.10.2015 and the prosecutrix identified the accused/appellant herein

as being the person who raped her forcibly against her will and consent and threatened to kill her if she disclosed the incident to her aunt (Y) and told her that he would give Rs.5,000/- to her mother and Rs.1,000/- to her. She *inter alia* stated that it was the summer season of the year 2014 when she had come to Delhi to the house of her aunt (Y) though she did not remember the date and month and one day she, the prosecutrix was cleaning utensils in the bath room of her aunt (Y) and at that time she and the accused/appellant herein were alone in the house and her aunt and their children were not present in the house and the accused/appellant asked her to serve the food and when she was about to serve the food to him, he told her that he did not want to have the food and then the accused asked her to go inside the room and lie down on a mat but she refused and then the accused/appellant herein slapped her and dragged her inside the room by holding her hand and the accused made her lie on the bed and asked her not to raise an alarm and the prosecutrix whilst her testimony was being recorded by the learned Trial Court started weeping at the stage. She further stated that the accused/appellant herein gagged her mouth with a chunni "*Mere muh me chunni thoos di*" and that the accused i.e. the appellant herein opened the string of her salwar and then put his urinating organ into her urinating organ and raped her by force against her will and consent and after committing rape on her threatened to kill her if she disclosed the incident to her aunt (Y) and also told her that he would give Rs.5,000/- to her mother and Rs.1,000/- to her and also told her that he would give her new clothes and chappals. She *inter alia* stated that she identified her signatures on her statement

under Section 164 of the Cr.P.C., 1973.

17. Through her statement under Section 164 of the Cr.P.C. i.e. Ex.PW3/B, the prosecutrix (P) corroborated the factum of forcible sexual intercourse committed on her by the accused/appellant herein, though there are variations in the series of stated occurrences from what had been stated in the FIR. This is so, inasmuch as the prosecutrix through her statement under Section 164 of the Cr.P.C. stated that she had been staying for the last 15 days prior to the recording of her statement under Section 164 of the Cr.P.C. on 26.04.2014 with her maternal aunt (Y) (Mausi) and she used to accompany her maternal aunt (Y) for doing domestic work of cleaning and one day her uncle (Mausa) i.e. the accused/appellant herein said that her aunt (Y) used to make her eat gutka and thus told her aunt (Y) not to take the prosecutrix (P) with her, as a consequence of which the prosecutrix stayed at home and one day after the maternal aunt (Y) had gone, the uncle (Mausa) i.e. the accused/appellant herein came home after consuming liquor and at that time she, the prosecutrix (P) was cleaning utensils and her uncle asked her for food and thus she gave him food and at that time, she the prosecutrix was alone at home and thereafter her uncle i.e. the accused/appellant herein told her that she should have her meals with him and thus she ate one roti and thereafter her uncle i.e. the accused/appellant herein asked her to lie down on a mat and she went and lay down and her uncle also came behind her and lay down with her and he opened the (naada) string of her salwar and before that he tied her mouth with the chunni and after

opening the string of her salwar he climbed up onto her and pressed her knees with his knees and started forcibly assaulting her and he again also had forcible sexual intercourse with her and also threatened to kill her if she informed anyone of the matter. She has further stated that on the next day again when her aunt (Y) and her cousin brother and sister were not at home, the accused/appellant herein again raped her by force against her will and consent and that she was scared due to rape committed on her by the accused/appellant herein and that he also threatened her and after 2/4 days she narrated the incident to her aunt (Y). She further stated that she had not immediately narrated the incident of rape to her aunt (Y) due to fear of the accused/appellant and stated thereafter 7 days of the incident she along with her aunt (Y) went to the police station and met with the Investigation Officer, SI Pooja and she narrated the whole incident to the IO. She further stated that one lady also came there and she also narrated the said incident to the said lady and her statement Ex.PW3/A was recorded by the IO on which she identified her signatures at point A and testified to her medical examination having been conducted at the LBS Hospital, Delhi where her clothes were taken by the doctor which clothes i.e. her salwar Ex.P1, ladies kurta Ex.P2, chunni Ex.P3, underwear Ex.P4 were identified by the prosecutrix as being those clothes which she was wearing at the time of her medical examination. She further stated that after the incident of rape, she had washed her clothes which she was wearing at the time of commission of rape on her by the accused. She admitted on being cross examined by the learned APP for the State that the dates of incidents were 17.04.2014 & 18.04.2014 and

that the place of the incidents was House no.69, Gali No. 29, South Anarkali, Gurudwara Gali, Delhi. *Inter alia* through her cross-examination recorded on 08.10.2015 and 20.11.2015, the prosecutrix stated that she had come to Delhi four times before the incident and stayed at her aunt's (Y) house and *inter alia* stated that the 4th time when she came to Delhi, she had come to Delhi along with the accused by bus. She further stated that she had stayed at the house of the accused/appellant for a month and that during that period the behavior of the accused/appellant was good and he had provided food to her. She also stated that whenever she came to Delhi, she along with her Mausi i.e. Y used to go to the others houses for domestic work as a maid. *Inter alia* the prosecutrix stated that sometimes the accused/appellant here came to his house in a drunken condition and stated that the accused/appellant and her aunt (Y) used to quarrel with each other. She further admitted that her aunt (Y) used to ask the accused/appellant not to drink liquor and due to this reason she used to quarrel with the accused/appellant herein. She further stated that her aunt (Y) and her children were not happy with the accused/appellant herein and admitted also that her aunt (Y) used to tell her personal problems to a lady in whose house her aunt (Y) was working as a maid and that her aunt (Y) also used to weep before that lady and that lady used to ask her aunt (Y) to get the accused sent to Jail. *Inter alia* the prosecutrix (P) stated that the accused also used to beat her and after seeing the quarrel between the accused/appellant herein and her aunt (Y), she had become scared. She further stated that when the accused used to quarrel with her aunt (Y) at that time her aunt (Y)

wanted that the accused should be sent to the Jail. She further stated that her aunt (Y) used to call the police at her house whenever her mausi i.e. the accused /appellant herein used to quarrel with her aunt (Y) and the police officials came to the house but they did not arrest the accused saying that it was a family matter and that they should settle the matter of their own. *Inter alia* the prosecutrix (P) stated that despite best efforts of her aunt (Y), the accused/appellant herein was not arrested by the police officials and *inter alia* she admitted that the accused used to beat his children on small issues. She further stated that she did not tell her parents about the quarrel between the accused and her aunt (Y) but denied that the lady had advised her aunt (Y) to use her i.e. the prosecutrix (P) as a tool to send the accused to Jail. She admitted that the accused had asked her aunt (Y) not to send her for domestic work in others houses as she had started eating gutka and her aunt (Y) also used to eat gutka. She further stated that the said lady told her i.e. the prosecutrix (P) that the accused would be in jail if she wished. *Inter alia* the prosecutrix stated that there were two rooms in the house of her aunt situated at the second floor though she did not remember the number of rooms at the first floor and third floor and stated that she did not remember the names of the tenants who were residing at the first floor and the third floor and stated that there was a latrine and bathroom at the house of her mausi and that there were houses near the house of her mausi i.e. her aunt (Y). *Inter alia* the prosecutrix stated that her aunt (Y) used to tell her that the police officials were not arresting the accused and that she was frustrated. The prosecutrix however denied that the accused had been falsely

implicated by her at the instance of her aunt (Y) and denied that the accused had not asked her to go to the room and lie on a mat and also denied that the accused had not slapped her and had not dragged her inside the room by holding her hand and had also denied that the accused had not gagged her mouth with her chunni. The prosecutrix categorically denied that the accused had not opened the string of her salwar and denied that he had not inserted her urinating organ into her urinating organ and denied that he had not raped her forcibly against her will and consent and denied that the accused/appellant herein had not threatened to kill her if she disclosed the incidents to her aunt (Y) and denied that the accused had not told her that he would give Rs.5,000/- to her mother and Rs.1,000/- to her. She further stated that prior to the incident the accused had given her Rs.20/- and she had handed over the same to her aunt (Y). She stated that she used to reside in one room in the house of her aunt (Y) and categorically denied that the accused had not committed rape on her and further denied that she had washed her clothes as the accused had not committed rape on her. The prosecutrix also stated that she did not make any call at number 100. She however admitted that the Investigation Officer obtained her signatures on blank papers but she denied however that she had deposed falsely.

18. The prosecutrix however in her first sentence in her testimony recorded on 08.10.2015 stated that ***“I am illiterate. I can only sign. I cannot read and write any language including Hindi.....”***

19. PW-5, the aunt (Y) of the prosecutrix (P) in her cross-

examination admitted that the accused/appellant used to harass and beat her and used to drink liquor and then harass her. She stated categorically that she had never thought of filing of any complaint against the accused. She denied categorically that on 18.04.2014 her children were at home on account of Good Friday and stated that her daughter accompanied her to the place of her work and her son had also gone for his job and stated that her younger daughter was at home but the accused had sent her somewhere.

20. *Inter alia* PW-5 stated that the prosecutrix was at home when she was raped by the accused. She further stated that the prosecutrix told her about the commission of rape in the evening of 17.04.2014 for the first time and did not disclose about the time of the commission of rape to her and she PW-5 did not file any complaint to the police against the accused on 17.04.2014. PW-5 stated on 18.04.2014 that the accused again raped the prosecutrix and on that day she i.e. the prosecutrix came to the house of the Malhotra Aunty at about 4.00 p.m. where PW-5 was working and informed her about the commission of rape by the accused. *Inter alia* PW-5 denied that the accused never raped the prosecutrix. She stated that on 18.04.2014 also, she did not file any complaint against the accused. She admitted that she went to Tihar Jail to meet the accused for two / three times. She voluntarily stated that she had gone to Tihar jail at the request of her mother in law and father in law and stated she that had deposited some money at Tihar Jail for use of the accused. She further stated that her mother in law and father in law had stayed with her for about two

months in the recent past and they are very nice to her and denied that she was deposing falsely.

21. PW-11 Ms. Geetanjali, Metropolitan Magistrate (Mahila Court), East is also indicated to have been examined on 15.09.2016 and her testimony remained unchallenged, she having not been cross examined on behalf of the accused. The testimony of the Ms. Geetanjali, Metropolitan Magistrate (Mahila Court), East is categorical to the effect that after putting some rational questions to the victim i.e. the prosecutrix, it was answered by the victim that she was going to make her statement under Section 164 of the Code of Criminal Procedure, 1973 voluntarily and thus Ms. Geetanjali, Metropolitan Magistrate (Mahila Court), East recorded the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 in the manner as stated by the witness and proved and exhibited the same as Ex.PW3/B and the certificate of correctness of statement was appended, which is Ex.PW11/D of which PW-11 had signed at point-X.

22. Ex.PW12/A was recorded by PW-12 Ms. Pearl Massey, Counsellor from the NGO, which also indicates that the prosecutrix had stated of the forcible sexual intercourse committed on her by the accused and of the threats meted out to her also if she told anyone about the same.

23. The impugned judgment of the learned Trial Court indicates that other witnesses examined by the State, their testimonies are as follows :-

“13. PW1-Dr. Astha Aggarwal deposed that on 26.04.2014 she had examined the prosecutrix. On examination the hymen of the prosecutrix was found torn. Her sexual assault evidence kit was prepared and her clothes were collected and the same were handed over the police alongwith the samples. This witness proved the MLC of the prosecutrix as Ex.PW1/A.

14. PW2-Constable Nagesh deposed that on 25.04.2014 at about 9:25 PM, the Duty Officer handed over a copy of the FIR and the original rukka to him for handing over the same to SI Pooja Saraswat who was present at LBS Hospital. Thus this witness went to LBS Hospital and handed over the copy of the FIR and the original rukka to SI Pooja Saraswat.

15. PW4- Dr. Manoj Teotia deposed that on 26.04.2014 he had medically examined the accused vide MLC Ex.PW4/A. On the basis of that medical examination he had opined that there was nothing to suggest that accused Billo was incapable of performing /sexual intercourse. The blood sample of the accused was collected, sealed and handed over to the police.

16. PW6-Constable Pushpender Kumar is the witness of arrest of the accused. He deposed that on 26.04.2014 he alongwith SI Pooja and Ct. Arvind went to the house of the accused and the accused was taken in custody vide arrest memo EX.PW6/A. His personal search was conducted vide memo EX.PW6/B. Thereafter, the accused was got medically examined at LBS Hospital. After medical examination, the doctor handed over the MLC and one sealed pullanda (packet) alongwith the sample seal to this witness who further handed over the same to the Investigating Officer vide seizure memo Ex.PW6/C.

17. PW7-Constable Arvind is another witness to the arrest of the accused on 26.04.2014 from his house.

18. PW8-ASI Sunita deposed that in the intervening night 25/26.04.2014 on the instructions of SI Pooja Saraswat, the prosecutrix was taken to LBS Hospital where she was got medically examined. After medical examination, the doctor handed over two sealed pullandas alongwith a sample seal to her which she handed over to SI Pooja Saraswat vide seizure memo EX.PW8/A.

19. PW9-HC Mahipal Singh deposed that on 25.04.2014 (he was working as the Duty Officer at police station Jagat Puri. This witness got the FIR Ex.PV\^3/C registered through a computer operator. He proved the kayami recorded vide DD no. 45A and his endorsement on the rukka as Ex.PW9/A. He proved the copy of certificate under section 65 B of Indian Evidence Act as Ex.PW9/B.

20. PW10-HC Satpal Singh was working as MHC (M) at police station Jagat Puri and he proved the relevant entries in Register No.19 regarding deposit of samples and case property of the prosecutrix and the accused at police station malkhana as Ex.PW10/A and Ex.PW10/B. He deposed that on 29.04.2014 he sent two sealed pullandas alongwith two sample seals to FSL Rohini through Ct. Ram Sagar vide RC no. 36/21/14 (Ex.PW10/C) and the copy of the acknowledgement of the FSL authorities in that regard is Ex.PW10/D.

24. PW13-Constable Ram Sagar deposed that on 29.04.2014 the MHC (M) handed over two sealed pullandas alongwith the sample seal to him for depositing the same at the FSL at Rohini. This witness went to FSL, Rohini and deposited the same and obtained the acknowledgement receipt from the FSL

authorities which he further handed over to the MHC(M).

25. PW14-Dr. Natasha Gupta deposed that X-ray report no. 2975 dated 05.05.2014 regarding bone age of the prosecutrix is in the handwriting of Dr. Priyanka who was working as a Senior Resident, Radiology at GTB Hospital but has now left the services of the hospital. This witness further deposed that she had seen Dr. Priyanka signing and writing during the course of her official course of duties. This witness deposed that as per the report, bone age of the prosecutrix was more than 18 years as on 05.05.2014.

26. PW15-Dr. P. K. Phukan, Casualty Medical officer, GTB Hospital proved the Emergency Registration Card dated 05.05.2014 regarding examination of the prosecutrix as EX.PW15/A. He deposed that as per the said Emergency Registration Card, the prosecutrix was referred to the Radiological Department for opinion regarding her bone age. The Emergency Registration Card was in the handwriting of Dr. Fahad Khan and he had seen him signing and writing during the official course of his duties.

27. PW16-SI Pooja Saraswat is the Investigating Officer of this case. She deposed that on 25.04.2014 she had recorded the statement of the prosecutrix. The prosecutrix was counseled by a representative of NGO who had also recorded the statement EX.PW12/A of the prosecutrix. She got the present FIR registered. The prosecutrix was got medically examined at LBS Hospital. The statement of the prosecutrix under section 164 Cr.P.C. was got so No.1508/2016 State vs. Billo page 13 of 30 recorded. The accused was taken in custody vide arrest memo EX.PW6/A and his personal search vide Ex.PW6/B was conducted. The disclosure statement of the accused Ex.PW16/B was recorded. Samples collected

from the person of the prosecutrix and the accused alongwith the clothes of the prosecutrix were sent to FSL, Rohihi for examination. Site plan Ex.PW16/C of the place of occurrence was got prepared on 30.04.2014. On 05.05.2014 the bone age test of the prosecutrix was got conducted. After completion of investigation, she filed the chargesheet before the court. This witness has also filed the FSL report Ex.PW16/D in the court.”

24. Through his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, the accused, i.e., the appellant stated that he never asked PW-5 as to whether or not to take the prosecutrix with her to the houses of others for domestic work and denied the allegations of rape committed by him on the prosecutrix and also denied that he had threatened to kill her and rather stated that he was not present in the house on 17.04.2014 and 18.04.2014 during the day time as he comes back to the house during late night hours as he had gone out for his work of POP at Amrapali Zordic, Sector-119, NOIDA. The accused *inter alia* through his statement under Section 313 Code of Criminal Procedure, 1973 apart from denying the incriminating evidence led against him stated that the witnesses cited are interested witnesses and he was having a matrimonial dispute with his wife and stated that he did not have any relation with his elder daughter as she had run away with a boy without information and stated that the prosecutrix had falsely implicated him at the instance of his wife and his daughter and his wife wanted to send him to jail but could not succeed. Though an opportunity was sought by the accused i.e. the appellant herein to lead defence evidence but no such defence evidence was led by him.

25. On a consideration of the entire available record and the submissions that have been made on behalf of either side, it is essential to observe that the testimonies of PW3 and PW11, the statement under Section 164 of the Code of Criminal Procedure, 1973 of the prosecutrix and the testimony recorded of the prosecutrix in Court and the averments made in the FIR in question bring forth that there is a categorical consistency in relation to the commission of rape of the prosecutrix by the accused on 17.04.2014 and 18.04.2014. Undoubtedly as observed elsewhere hereinabove, the allegations in relation to the mode of occurrence however, the statement which forms the basis of the FIR and the testimony and witnesses are both identical in relation to the material particulars that the prosecutrix washed her clothes after the incident and thus the same brings forth that there could be no semen stains on the clothes of the prosecutrix.

26. Though, no injuries were found on the person of the prosecutrix as per the MLC Ex.PW1/A and there was no discharge or bleeding and no fresh tear, nevertheless the hymen was shown to be torn. Significantly, the prosecutrix had stated at the time of the conducting of the MLC that she wanted her medical test conducted and had also stated to the doctor that the accused had committed sexual assault upon her twice and had threatened that he would kill her if she told about the same to anyone.

27. As per the FSL report dated 29.06.2015 Ex.PW16/D, two sealed parcels qua FIR No. 251/14, PS Jagatpuri were received on 29.04.2014 for DNA fingerprinting and indicated that there was no

semen found on any of the exhibits and thus there was no DNA analysis conducted. It has thus been contended on behalf of the appellant as already adverted to hereinabove that with the available record through the variations in the testimony of the prosecutrix from her testimony under Section 164 of the Code of Criminal Procedure, 1973 in relation to the sequences of events and also the variations in the testimony of PW-5 i.e. Aunt of the prosecutrix and the prosecutrix coupled with the factum that PW-5 despite having learnt about the stated rape committed on the prosecutrix by the accused on 17.04.2014 and 18.04.2014 also did not lodge the complaint to the police till the date 25.04.2014 and it was thus submitted on behalf of the accused i.e. the appellant herein that the said delay in the registration of the FIR is thus fatal to the prosecution version. It was also submitted on behalf of the appellant that the factum that there were matrimonial disputes between the accused and PW-5 i.e. the Aunt of the prosecutrix coupled with the factum that PW-5 i.e. the Aunt of the prosecutrix had called the police several times on the complaints made by her but as stated by the prosecutrix that the police had never arrested the accused, coupled with the statement of the prosecutrix that the lady with whom the Aunt of the prosecutrix worked, had told her that she could get the accused/appellant herein jailed whenever she wanted, and that she used to tell to PW-5 that she should get the accused/appellant arrested because of the domestic maltreatment meted out to her, it has been submitted on behalf of the accused/appellant that the appellant had clearly been falsely implicated in the instant case and ought to be acquitted.

28. On behalf of the State, the learned Additional Public Prosecutor for the State vehemently refuted the contentions raised on behalf of the appellant and contended that the testimony of the prosecutrix was consistent in relation to the material particulars in relation to the rape committed on her twice forcibly by the accused and of the threats meted out to her in the event of her making any complaint to anyone of the incidents of rape committed upon her by the accused. It is also contended on behalf of the State that the medical examination of the prosecutrix was conducted only on 25.04.2014 in relation to the incident of rape on 17.04.2014 and 18.04.2014 and thus as the prosecutrix had stated that she had washed her clothes after the incident, thus there was no possibility of any semen and thus the absence of any semen found in the report of the FSL did not in any manner suffice to detract from the veracity of the allegations leveled against the accused.

29. It was also submitted on behalf of the State that the delay in the registration of the FIR in the instant case was clearly understandable, taking into account the factum that the accused was the spouse of PW-5 i.e. Aunt (Y) of the prosecutrix and thus there was delay in the registration of the FIR.

30. Another contention raised on behalf of the appellant was that the uncorroborated testimony of the prosecutrix in the facts and circumstances of the instant case did not suffice to bring forth the allegations levelled against the appellant herein beyond a reasonable doubt qua the charge of allegations in the instant case against the

accused/appellant herein qua the commission of the offence punishable under Section 376(2)(f) & Section 376(2)(n) of the Indian Penal Code, 1860 apart from charge of allegations qua the offence punishable under Section 506 of the Indian Penal Code, 1860.

31. On a consideration of the entire available record and rival submissions made on behalf of either side it is held that there is no infirmity in the impugned judgment of the learned Trial Court inasmuch as, as already observed hereinabove there is an inherent natural consistency in the testimony of the prosecutrix (P) in relation to the occurrences of rape having been committed upon her by the accused/appellant on 17.04.2014 and 18.04.2014. The factum that there was a delay in the registration of the FIR which was registered on 25.04.2014 as observed hereinabove, was rightly held to be understandable by the learned Trial Court, taking into account the factum that the accused/appellant herein is the husband of the maternal aunt (Y) of the prosecutrix (P) and the prosecutrix (P) in fact stayed at the house of the maternal aunt (Y) and that of the accused/appellant when the offence of rape was committed upon her by the accused/appellant herein when there was no one else at home apart from the prosecutrix(P) and the accused/appellant herein. That the accused was the husband of the maternal aunt (Y) of the prosecutrix coupled with the factum that the prosecutrix was under a threat that she would be killed if she told anyone of the commission of rape on her by the accused/appellant, all make it apparent that the delay in the registration of the FIR in the instant case is not fatal.

32. The verdict of the Hon'ble Supreme Court in **“State of Punjab Vs. Gurmit Singh” AIR 1996 SC 1393** lays down categorically that the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family and it is only after giving it a cool thought that a complaint of sexual offence is generally lodged. To similar effect are the observations of the Hon'ble Supreme Court in **“State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny” 2016 (12) SCALE 831** wherein, it has been observed to the effect:-

24. When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in [Tulshidas Kanolkar v. State of Goa](#):

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is

satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.”

25. In *Karnel Singh v. State of Madhya Pradesh*[2], this Court observed that:

“7...The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false...”

26. Likewise, in *State of Punjab v. Gurmit Singh & Ors.*[3], it was observed:

“8...The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the

prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged...”

27. Notwithstanding the fact that the trial court accepted the explanation for delay as satisfactory by giving detailed reasons, we are dismayed to find that the High Court has been swayed by this delay in reporting the matter with omnibus statement that it is not satisfactorily explained without even an iota of discussion on the explanation that was offered by the prosecution in the form of testimonies of PW-1 and PW-2.”

To similar effect is also the verdict of the Hon'ble Supreme in “**Satpal Singh Vs. State of Haryana**” 2010 (7) SCALE 322 wherein, it has been observed to the effect:-

13. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences. (Vide Karnel Singh Vs. State of M.P. AIR 1995 SC 2472; and State of Punjab Vs. Gurmeet Singh & Ors. AIR 1996 SC 1393).

14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a

coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety. [vide State of Andhra Pradesh Vs. M. Madhusudhan Rao (2008) 15 SCC 582].

15. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon" [vide Satyapal Vs. State of Haryana AIR 2009 SC 2190].

16. In State of Himachal Pradesh Vs. Prem Singh AIR 2009 SC 1010, this Court considered the issue at length and observed as under :-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to

lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

17. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick.

18. If the instant case is examined in the light of the aforesaid settled legal proposition, we are of the considered opinion that the delay in lodging the FIR has been satisfactorily explained."

33. Thus, in the instant case the delay in registration of the FIR has been satisfactorily explained even if the aunt (Y) of the prosecutrix (P) learnt of the commission of rape on both dates i.e. 17.04.2014 & 18.04.2014, taking into account the factum that she is the wife of the accused/appellant herein, the delay of marginal number of days i.e. the delay of 8 days approximately till the date 25.04.2014 is clearly explained.

34. As regards the contention raised on behalf of the appellant that there are no injuries on the person of the prosecutrix (P), which itself negated the factum of any commission of rape on the prosecutrix (P) by the accused/appellant herein coupled with the factum that there was no semen detected in the exhibits i.e. the clothes of the prosecutrix (P), it is essential to observe that the medical examination of the prosecutrix (P) was conducted only on 25.04.2014 with the commission of rape on the prosecutrix (P) on 17.04.2014 & 18.04.2014. The MLC Ex.PW1/A indicates the existence of the

hymen being torn and indicates that the prosecutrix (P) did state to the doctor who had examined her that she had been sexually assaulted by the accused/appellant twice and that he had threatened to kill her if she told anyone of the same and the MLC also indicates that despite the same the prosecutrix wanted to get herself examined, and it cannot also be overlooked that the prosecutrix (P) in her testimony stated that after the incidents of rape she had bathed, coupled with the factum that in view of the FIR having been registered on 25.04.2014, the medical examination of the prosecutrix on 25.04.2014 could thus not bring forth the fresh injuries on her person and could have thus also not assisted in bringing forth the existence of any semen on any of the clothes that were worn by the prosecutrix (P) at the time of the medical examination. Thus, the absence of any injury and the absence of semen on the clothes of the prosecutrix (P) does not in any manner suffice to detract the veracity of the testimony of the prosecutrix (P) which in the facts and circumstances of the instant case does not require any corroboration whatsoever. The verdict of the Hon'ble Supreme Court in "**Radhu Vs. State of Madhya Pradesh**"2007 CRL. L.J. 4704 categorically lays down to the effect:-

5. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated,

unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

35. Undoubtedly, the testimony of the prosecutrix which is the sole testimony to be considered has to be one which inspires confidence and as observed hereinabove in the instant case, the available record brings forth a consistency in relation to all material particulars qua the commission of the offence. It has been laid down by the Hon'ble Supreme Court in **"Narinder Kumar V. State (NCT of Delhi)"** in **Crl. Appeal Nos. 2066-67 of 2009** which observed to the effect:-

"16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the

prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).

20. In *Tameezuddin @ Tammu v. State (NCT of Delhi)*, (2009) 15 SCC 566, this Court held has under:

“It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

36. The verdict of the Hon’ble Supreme Court in “**Ranjit Hazarika**

Vs. State of Assam (1998) 8 SCC 635, wherein it has been observed to the effect:-

8. The observations in Gurmit Singh's case were reiterated in Ranjit Hazarika vs. State of Assam(1998) 8 SCC 635 in the following terms: "The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. 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. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The

evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be selfinflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. 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. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

37. The verdict of the Hon'ble Supreme Court in "**Mohammad Ali @ Guddu Vs. State of U.P.**" 2015 Cr.;L.J. 1967 also lays down to the effect:-

"that the sole testimony of the prosecutrix if it is unimpeachable and beyond reproach can certainly result into a conviction and that the grammar of law permits the testimony of the prosecutrix to be accepted

without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony and where the testimony of the prosecutrix does not inspire confidence and the circumstantial evidence remotely do not lend support to the same, the conviction of the accused on the basis of the same will be erroneous.”

38. As observed hereinabove, there is no inconsistency in the testimony of the prosecutrix in relation to all material particulars of the commission of rape on her both on 17.04.20014 & 18.04.2014 by the accused/appellant herein. The accused/appellant being a relative of the prosecutrix (P) with the prosecutrix (P) having been living at his house, coupled with the factum of repeated rape having been committed on her by the accused/appellant herein inasmuch as she was raped twice, the presumption under Section 114 (A) of the Indian Evidence Act, 1872 squarely applies to the facts and circumstances of the instant case, wherein it has been provided as follows:-

“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause

(a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is

proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

39. This is so inasmuch as Section 376(2)(f) of the Indian Penal Code, 1860, which provides as follows:-

“Whoever being a relative, guardian or teacher, of, or a person in a position of trust or authority towards the woman, commits rape on such woman shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons’ natural life, and shall also be liable to fine.”

and Section 376(2)(n) of the Indian Penal Code, 1860, which provides as follows:-

“Whoever commits rape repeatedly on the same woman shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.”

both wholly apply to the facts and circumstances of the instant case.

40. The testimony of the prosecutrix is categorical that she was threatened by the accused/appellant herein that she would be killed if she made any complaint to anyone or told anyone about the commission of the rape on her by the accused/appellant.

41. Thus, as observed hereinabove, there is no infirmity in the

impugned judgment of the learned Trial Court dated 23.12.2016 whereby the appellant was convicted for the commission of offences punishable under Section 376(2)(f) & Section 376(2)(n) of the Indian Penal Code, 1860 and Section 506 of the Indian Penal Code, 1860. In the facts and circumstances of the instant case, taking into account the factum that the prosecutrix is a relative of the wife of the accused/appellant herein and the prosecutrix was thus living in the house of the accused on the basis of trust of the relationship between the prosecutrix (P), her maternal aunt (Y) and the accused/appellant herein, the appellant herein merits no leniency of any kind whatsoever.

42. The impugned order on sentence indicates that a recommendation had been made vide the impugned order on sentence dated 26.12.2016 to the Delhi Legal Services Authority to determine and award appropriate compensation to the victim/prosecutrix herein in accordance with the provisions of Section 357A of the Cr.P.C. and the scheme, in relation to which the report is called for from the Member Secretary, Delhi Legal Services Authority for the date 30.01.2019.

43. The impugned order on sentence dated 26.12.2016 which has sentenced the convict i.e. the appellant herein to undergo Rigorous Imprisonment for a period of 10 years both qua the offences punishable under Section 376(2)(f) & Section 376(2)(n) of the Indian Penal Code, 1860 with the payment of a fine of Rs.3,000/- qua each of the offences and in default of the payment of the said fine to undergo Simple Imprisonment for a period of 30 days with Rigorous

Imprisonment sentenced for a period of one year qua the offence punishable under Section 506 of the Indian Penal Code, 1860 which have all been directed to run concurrently with the benefit of Section 428 of the Cr.P.C., also is thus upheld and calls for no variation or reduction.

44. However, in terms of the verdict of Supreme Court in *Phul Singh Vs. State of Haryana* in Criminal Appeal No. 506/1979 decided on 10.09.1979 and directions laid down by us in *Sanjay vs. State* 2017 III AD (Delhi) 24, dated 20.02.2017 so that the “*carceral period reforms the convict*” and in *Randhir @ Malang vs. State* Crl. A. No. 456/2017, *Chattu Lal vs. State* Crl.A. No.524/2017, *Afzal vs. State (Govt. of NCT of Delhi)* Crl.A. No.996/2016 it is essential that the following directives detailed hereunder are given so that the sentence acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation.

45. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible:

- **appropriate correctional courses through meditational therapy;**
- **educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;**

- **shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent,**
- **ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti – social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;**
- **adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;**
- **conducting of Psychometric tests to measure the reformation taking place and;**
- **that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.**

46. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

47. The present appeal is thus dismissed.

48. Copy of this judgment be also sent to the Principal Secretary, Delhi State Legal Services Authority, through a Special Messenger for the said compliance and be also sent to the Superintendent, Central Jail, Tihar, for being handed over and explained to the appellant, the Director General, Prisons, Delhi and to the Secretary, Law, Justice and

Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions.

49. The Trial Court Record be returned with the certified copy of this judgment.

ANU MALHOTRA, J

DECEMBER 05, 2018
NC

