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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered On: 09.12.2019

CRL.A.1309/2013

STATE

..... Appellant

Versus

AMAR PAL

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ashish Dutta, APP with Inspector Vikram Singh, Police Station – Sangam Vihar
For the Respondent : Mr. Kedar Yadav, Mr. Harkaran Singh and Mr. Sanjeev Kumar Baisoya, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The State having been granted leave to appeal in CRL.L.P.304/2012 vide order dated 09.10.2013, assails the impugned judgment dated 18.07.2011, rendered by the learned Additional Sessions Judge-01, Designated Judge : TADA/POTA/MCOCA, Saket Courts, New Delhi in

Sessions Case No.13/09, titled as '*State vs. Amar Pal*' arising out of FIR No.560/08, Police Station- Sangam Vihar, whereby the solitary accused (hereinafter referred to as the 'respondent'), was acquitted qua the commission of offences punishable under Sections 376/506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. It is the case of the prosecution that on a report, at about 12:05 AM, on the night intervening 8/9.10.2008 — recorded by S-50 through wireless set — an information of a quarrel at C-10, Lal Kuan was received, which was registered as DD No.38 (Ex.PW.7/A) at Police Post Pul Prahladpur Police Station- Sangam Vihar; and on the basis of which FIR No.560/2008 dated 09.10.2008, under Sections 376/506 IPC was subsequently registered at the Police Station Sangam Vihar.

3. Head Constable Prahlad Singh PW-12 testified that on 09.10.2008, when he was posted at Police Post Pul Prahladpur, Police Station – Sangam Vihar, on receipt of the said DD No.38 Ex.PW.7/A, he along with Constable Sanjay Kumar PW-13 went to the spot at C-18/B, Lal Kuan, Chungi No.13, New Delhi. The minor prosecutrix X PW-1, aged about 11 years, along with her father Upender Yadav PW-2 and mother Sunita Devi PW-6, met him at the spot, where several public persons had also gathered. The father and the

public persons handed over to the police, the respondent Amar Pal, son of Chanda Ram, who had been beaten up by them; and whose name was revealed upon sustained enquiry. Upender Yadav PW-2, the father of the minor victim X simultaneously gave a complaint to the effect that, the respondent Amar Pal had committed rape upon his minor daughter, prosecutrix X. On this complaint, Head Constable Prahlad Singh PW-12, informed the In-charge of Police Post Pul Prahladpur, Sub-Inspector Nirbhay Kumar; and thereafter took the minor victim X along with her parents, as well as, the respondent to All India Institute of Medical Sciences (hereinafter referred to as 'AIIMS') for their medical examination. Head Constable Prahlad Singh PW-12 was accompanied by Constable Sanjay Kumar PW-13, at that time.

4. The minor victim X was medically examined at the AIIMS vide MLC Ex.PW.14/A, by Dr. Ajit Singh PW-14. The respondent Amar Pal was also medically examined vide MLC Ex.PW.11/A by Dr. Akhilesh Raj PW-11. All the exhibits, including the underwear of the minor victim X, her vaginal swab, as well as, the underwear of the respondent Amar Pal and his blood sample in gauze with penile swab, given by the examining doctors, were seized by W/SI Satish Bhati, Investigating Officer PW-16. W/SI Satish

Bhati PW-16 recorded the statement of the minor victim X and prepared the rukka Ex.PW.16/A, which was sent to Police Station Sangam Vihar through Constable Sanjay Kumar PW-13 for the registration of the subject FIR.

5. The respondent was also sent to the Police Station along with Head Constable Prahlad; and the minor victim X was taken to the scene of crime, where the site plan Ex.PW.16/B was prepared.

6. The subject rukka , which was exhibited as Ex.PW.16/A recorded the complaint of the victim as follows:-

“बयान अजाने ‘minor victim X’ (sic) d/o उपेंद्र यादव R/o C-10 B चुंगी न. 3 लाल कुआँ नई दिल्ली बाउम 11 साल बयान किया कि मैं पता उपरोक्त पर अपने माता पिता के साथ रहती हूँ और पांचवी कक्षा में पढ़ती हूँ। आज दिनांक 8/9.10.2008 को मेरी माता जी मुझे व मेरी छोटी बहन सावित्री को अपने घर में सोता हुआ छोड़ कर बाहर से कुण्डी लगा कर मेरे पिताजी जो कि परचून की दुकान करते हैं उनके पास चली गयी थी जो समय करीब 11.30 बजे रात जब हम दोनों बहनें अपने कमरे में पलंग पर सोई हुई थी तो एक लड़का मेरे कमरे में दरवाजा खोलकर आया व मुझे दूसरे कमरे में ले गया व पलंग पर डाल दिया और कहने लगा कि तू जीना चाहती है कि मरना चाहती है तो मैंने कहा कि मैं जीना चाहती हूँ तो उसने मेरे शरीर पर पहने हुए कपड़े को जबरदस्ती उतार दिया व मेरी मुंह अपने हाथ से दबाकर बंद कर दिया व अपने गुप्तांग को मेरी योनि में डाल दिया तथा मेरे मुँह को जोर से बंद कर दिया जिसके कारण मैं शोर नहीं मचा सकी। जिसने मेरे मर्जी के खिलाफ जबरदस्ती मेरे साथ बलात्कार किया (करता रहा) जो इतनी देर में ही मेरे माता पिता आ गए व बाहर से दरवाजा खटखटाने लगे। तो वह मुझे बिस्तर पर ही छोड़कर दरवाजा खोलने चला गया। जो मेरे माता पिता ने उसे पकड़ लिया व शोर मचा दिया जिससे पड़ोसी भी आ गए जिन्होंने उस लड़के को मारा पीटा जिसका नाम पता अब अमर पाल s/o चंदा राम r/o गाँव अनंगपुर

जिला हरियाणा मालूम हुआ है जिसने मेरे घर में घुस कर मेरी मर्जी के खिलाफ मेरे साथ जबरदस्ती बलात्कार किया है, इसके खिलाफ कानूनी कार्यवाही की जाये।

श्रीमान Duty Officer, PS Sangam Vihar, New Delhi बकार सरकार निवेदन है कि इमरोज़ समय करीब 12.30 बजे रात मन SI को बजरिया Tele Mobile IC PP प्रवीण वत्स न.D-3630 ने बाहुकम SHO संगम विहार इत्तला दी कि चौकी पुल प्रहलाद पुर H.NO.C-10/B चुंगी न.3, लाल कुआँ नई दिल्ली में एक minor लड़की के साथ बलात्कार किया गया है जो लड़की व मुल्जिम उपरोक्त को लेकर HC प्रहलाद न.577/SD व Ct. संजय कुमार न.848/SD गए हैं जो इत्तला मिलने पर मन SI AIIMS, New Delhi पहुंची जहाँ पर victim 'prosecutrix X' (sic) d/o उपेंद्र यादव r/o C-10/B, चुंगी न.3 लाल कुआँ नई दिल्ली मुलाकि हुए जिसका बयान हासिल किया गया व MLC No.CS 89425/08 पर victim उपरोक्त का medical examination कराया गया व alleged person अमर पाल s/o चंदा r/o गाँव अनंगपुर फरीदाबाद, हरियाणा का भी medical examination MLC No.CS89426/08 पर कराया व exhibits हासिल किये गए। जो बयान पुस्त हजा व मुलायजा MLC से सरेदस्त सूरत जुर्म u/s 376/506 IPC का सरज़द होना पाया जाता है लिहाजा तहरीर हजा बगरेज़ कायमी मुकदमा बदस्थ Ct. संजय न. 848/SD अरसाल थाना है। मुकदमा दर्ज रजिस्टर करके नंबर उपरोक्त से इत्तला दी जाये। मन SI रवाना मौका का होती हूँ।

ता. वक्त वकुआ : 08.10.08 at about 11.30 a.m.

जाय वाकुआ : H.NO.C-10 B, चुंगी न. 3, लाल कुआँ, नई दिल्ली

ता व वक्त रवानगी तहरीर : 4.30 a.m. dt. 09.10.08.

Satish Bhati, SI
No.D-1221
PIS No.28850055
Dt. 09.10.08

DD No.38A at 05.15 a.m.
FIR 560/08 u/s 376/506 IPC

Sd/-
ASI/DO
PS Sangam Vihar
Dt. 09.01.08.”

7. W/SI Saitsh Bhati PW-16 then went to Police Station and arrested the respondent vide arrest memo Ex.PW.1/B dated 09.10.2008. On the very next day i.e. the 10.10.2008, the statement of the minor victim X, under Section 164 Cr.P.C., was recorded by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi vide Ex.PW.5/A, which reads as follows:-

“Statement of ‘minor victim’ X (sic) d/o Upender Yadav, r/o Lal Kuan, Chungi No.3, Sangam Vihar, Delhi.

08.10.2008 बुधवार रात 11.30 बजे मेरी माँ मुझे व मेरी बहन को खाना खिलाकर व सुलाकर दुकान पर मेरे पिताजी के पास, बहार से कुण्डी लगा कर गयी थी। फिर अंदर एक आदमी घुस गया। वह मुझे उठा कर दूसरे कमरे में ले गया। उस आदमी फिर कहा लड़के ने मेरा मुँह बंद कर दिया। उसने मुझे कहा कि तू जीना चाहती है तो अपनी कच्ची (Under Wear) खोल। उस लड़के ने मेरी कच्ची जबरदस्ती खोल दी। फिर उसने अपने पेशाब करने वाली चीज़ मेरी योनि में डाल दी। मुझे खून निकलने लगा। इतनी देर में मेरे मम्मी पापा आ गए। मेरे पापा ने दरवाजा खटखटाया। थोड़ी देर बाद उस लड़के ने दरवाजा खोला। मेरे मम्मी पापा ने उस लड़के को पकड़ लिया। हमारे पड़ोसी भी आ गए जिन्होंने उस लड़के को मारा। मुझे बाद में लड़के का नाम पुलिस चौकी में पता लगा। उस लड़के का नाम अमर पाल है जो मुझे पुलिस चौकी में पता लगा। उसी लड़के ने मेरे

साथ गलत काम किया है।

Certified that the statement of 'minor victim' (sic) has been recorded by me in my own handwriting. The same is true and correct account of statement made by 'the minor victim' (sic) d/o Upender voluntarily to me. Nothing has been added or subtracted by me in recording the statement of 'the minor victim' (sic).

Sd/-
M.M.
10.10.08

The record of the proceedings be sent to the court concern in a sealed cover bearing the seal of N.K.

Sd/-
M.M.
10.10.08

8. The exhibits qua the respondent and the minor victim X were sent to the Forensic Science Laboratory and results therefrom were obtained vide Ex.PW.10/A and Ex.PW.10/B respectively. W/SI Satish Bhati also had the bone age x-ray of the minor victim X conducted at the AIIMS and the results thereto were obtained vide Ex.PW.4/A.

9. The birth certificate qua the minor victim X, was also obtained from the school first attended by her i.e. Municipal Corporation Primary School, Lal Kuan Gaon Chungi No.2 — Girls, vide seizure memo Ex.PW.2/A, accompanied by the certified school certificate Ex.PW.2/B, issued by the

Principal of the said school.

10. After recording the statement of the witnesses and completion of the investigation, charge sheet for the commission of the offences under Sections 376/506 IPC was prepared and filed against the respondent, by the prosecution.

11. The trial court vide its order dated 18.03.2009, framed charges against the respondent for the commission of offences under the provisions of Sections 376/506 IPC, to which the latter pleaded not guilty and claimed trial.

12. In order to establish its case against the respondent beyond doubt, the prosecution examined 16 witnesses, in all.

13. The statement of the respondent under Section 313 Cr.P.C. was recorded thereafter, wherein he denied the case of the prosecution in *toto* and stated that he has been falsely implicated in this case.

14. It was the admitted case of the respondent that, although he was present at the spot where the commission of the offence is stated to have occurred, he was there owing to a quarrel between him and a local person at about 11:00 p.m. on 08.10.2008; and that he had suffered injury on his person, as opined vide MLC Ex.PW.11/A, as a consequence thereof.

15. The respondent, chose to examine DW-1 Smt. Meera Devi on his behalf in his defence, who testified as follows:-

“17.03.2011/DW.1

DW-1 : Statement of Smt. Meera Devi w/o Sh. Rambilas Shah, Aged about 40 years, R/O C-18, Near Chungi No.3, Lal Kuan, New Delhi, Education: Illiterate, Profession: House wife.

On SA.

On 08.10.2018 at about 11.00 pm. I was standing at the door of my above house. A young boy in a drunken condition came from Chungi no. 03 and pass through our Gali as he reached at the edge of Gali, an altercation took place in between some local boy standing at the edge of the Gali with the drunken person, the accused present in the court today. The altercation turned into a quarrel and beating meanwhile, some local residents also joined the fray. In the quarrel, the said drunken person sustained injury on his person. Someone made a call to the police. The police personnel arrived at the spot C-18, near Chungi No.3, Lal Kuan, New Delhi, took the injured person to the police chowki. Later on, some local resident also went to the police chowki. Since, the liquor shop situated at Chungi No. 3, Lal Kuan, nearby the locality, such type of quarrel frequently took place between the local resident and drunken persons.

XXXX by Sh. S.K. Raghuvanshi, Ld. Addl. Public Prosecutor for State.

It is correct that although quarrel used to take place frequently but no case of this type ever registered after quarrel.

Sd/-

ASJ/17.03.2011

30.03.2011

DW: Statement of Smt. Meera Devi recalled for cross-examination in continuation of testimony recorded on 17.03.2011.

On SA.

XXX by Sh. S.K. Raghuvanshi, Ld. Addl. Public Prosecutor for State.

It is correct that although quarrel used to take place frequently but no case of this type ever registered after quarrel.

Sd/-

ASJ/30.03.2011”

16. The learned trial court having considered the evidence on record and heard learned counsel appearing on behalf of the parties, opined that the minor victim X appeared to be tutored witness and resultantly, it was not safe to rely on her testimony. The trial court, therefore, held that the prosecution had failed to prove its case against the respondent beyond reasonable doubt and acquitted the latter of both the charges framed against him under Sections 376/506 IPC, as aforementioned.

17. The State, aggrieved by the impugned judgment, assails the irregularity, legality and correctness thereof, *inter alia*, on the following grounds:-

A. That the impugned judgment/order passed by the

Ld. Trial Court is contrary to law and facts established on record. The Ld. Trial Court did not properly appreciate the evidence on record and erred in acquitting the respondent of the offences under Section 376/506 IPC although clear and cogent evidence was brought on record to prove that offence was committed by respondent.

B. That the impugned judgment is erroneous as the same is based on surmises and conjectures without any cogent evidence that prosecutrix's statement is not reliable and she has been tutored without there being any material before the Hon'ble Court for drawing such conclusion.

C. That the finding in the impugned judgment that the identification of accused by prosecutrix on 04.11.2009 was not reliable as she had not identified him on 21.05.2009, is bad in law particularly when on 04.11.2009, she fully explained the reason for not identifying accused on

21.05.2009. The reason advanced by her in detail was that the relatives of accused who were present outside court on 21.05.2009 had threatened to kill her if she identified the accused in court. This explanation of the prosecutrix appears to be most reasonable and appeals to prudence. In fact the Trial Judge ought to have considered the full testimony of the prosecutrix and also the other facts that accused was arrested from the spot and that the other prosecution witnesses PW2 and PW6 have supported the case of the prosecution that they had seen accused committing rape and he was apprehended at the spot.

- D. The Ld. Judge failed to appreciate the testimony of PW-10, Dr. Dhruv Sharma, Senior Scientific Officer (Biology), FSL, Rohini, who proved the FSL reports Ex.PW.10/A and Ex.PW.10/B.
- E. The Ld. Judge failed to appreciate the testimony of PW-12 HC Prahlad Singh who deposed that on

receipt of DD No.38, he proceed to the spot where he met the prosecutrix and her parents who explained the commission of rape and the accused was handed over to the police. The crowd from neighbourhood was also gathered there and they had also given beatings to accused. The accused as well as the prosecutrix were then taken to AIIMS where the samples for medical examination were taken by the doctors and MLC of both was prepared.

- F. The Ld. Judge failed to appreciate that accused was caught red handed from the spot i.e. house of the prosecutrix which was the place of occurrence.
- G. The Ld. Judge failed to appreciate that PW-2 father of prosecutrix, while giving his testimony in Court on 24.08.2009, also moved an application for protection as constant threats were being given by uncle of accused namely Rajender @ Raja Gujjar for long time that the case against accused

be withdrawn.

- H. The Ld. Judge failed to appreciate the testimony of PW-1, the prosecutrix, whose testimony was cogent, coherent, reliable and truthful.
- I. The Ld. Judge failed to appreciate that accused could not offer any valid explanation, enmity or feud with the father of prosecutrix which could have lead to falsely implicating respondent. The respondent was a total stranger for them. The Ld. Trial Judge ought to have considered that since there is no enmity between prosecutrix who was barely eleven years old and the accused or his any other family member, of the nature so as to falsely implicate the accused and let the real culprit go scot-free particularly when it is established in the MLC of prosecutrix Ex.PW.14/A that rape was committed on her and hymen was ruptured.
- J. The Ld. Judge failed to appreciate that respondent was seen committing rape by father of prosecutrix

PW-2, who was an eye witness, through the gap in the door and on his repeatedly knocking the door, the respondent opened the door and was apprehended at the spot by the parents of the prosecutrix and prosecutrix at the same time identified the accused as well as the offence whereupon the police was called and samples for medical examination of both were lifted.

K. The Ld. Judge failed to appreciate that medical evidence on record totally supported the commission of offence and the accused being offender. FSL report Ex.PW.10/A and Ex.PW.10/B as well as MLC Ex.PW.14/A proved beyond reasonable doubt commission of rape.

L. The Ld. Judge totally overlooked the well established principle of law that in a case like the present one, unrebutted and reliable testimony of prosecutrix duly supported by medical evidence could be solely relied upon as the basis of

conviction.

M. The Ld. Judge failed to appreciate the testimony of PW-5, Sh. Naresh Kumar Malhotra, MM, who recorded statement of prosecutrix and that in her statement recorded u/s 164 Cr.P.C. on 10.10.2008 she had specifically named the respondent having committed rape on her and her statement was duly proved as Ex.PW.5/A and Ex.PW.5/B.

N. The Ld. Judge erred in drawing adverse conclusion on account of PW-6, mother of prosecutrix, not accompanying her to the police station and hospital along with the father without appreciating that there was another minor daughter with her aged about 9 years to be looked after at home and that she specifically deposed that the trauma was such that she herself became unconscious and in these circumstances it was her husband alone who accompanied the prosecutrix to the police station as well as the hospital.

O. The Ld. Judge failed to place reliance upon testimony of PW-1 without any cogent reason and drew wrong conclusion about her being a tutored witness although the incident of threat was fully explained by her on 04.11.2009.

18. Mr. Ashish Dutta, learned APP appearing on behalf of the State would invite our attention to the testimony of the minor victim X PW-1, as well as, that of her parents Upender Yadav PW-2 (father) and Sunita Devi PW-6 (mother), to urge that the same is reliable and trustworthy and clearly establishes both the commission of rape on the minor victim X, as well as, identification and culpability of the respondent, as the perpetrator of the subject sexual offence. It would also be urged, by relying on the testimony of PW-12 Constable Prahlad Singh, PW-13 Constable Sanjay Kumar and W/SI Satish Bhati, the Investigating Officer that, the respondent had been apprehended by Upender Yadav PW-2 and Sunita Devi PW-6, the parents of the minor victim X, during the commission of the offence itself and handed over to the police immediately thereafter. Mr. Ashish Dutta, learned APP for the State would emphasize that upon a conjoint reading of the aforesaid

testimonies, it was proved beyond reasonable doubt that none other than the respondent was guilty of having committed sexual assault upon the minor victim X.

19. In this behalf, it would also urged that, the medical evidence on record, including the FSL report Ex.PW.10/A and Ex.PW.10/B, as well as, the MLC Ex.PW.14/A, totally supported the case of the prosecution, qua the commission of the sexual offence on the minor victim X, and the respondent as being indubitably the perpetrator thereof.

20. Per contra Mr. Kedar Yadav, learned counsel appearing on behalf of the respondent would canvass before us the findings arrived at by the trial court to urge that the same are cogent and did not warrant any interference by this court in appeal. It would be urged on behalf of the respondent that the learned trial court came to a conclusion that the minor victim X had been completely unable to identify the accused initially and did so later, under the tutoring of the prosecution at a subsequent stage of the trial. Learned counsel appearing on behalf of the respondent would also allude to the major contradictions found by the learned trial court in the testimony Upender Yadav PW-2 and Sunita Devi PW-6 in relation to the occurrence of the rape. Our attention was invited by defence counsel, to the following paragraphs of

the impugned judgment dated 18.07.2011, in order to buttress this contention:-

“32. PW-1 Baby X in her statement recorded on 21.05.2009, though narrated the incident but not identified the accused. She is not disputing the incident, however, as far as identity of accused is concerned, she has failed to identify the accused. She has stated that she do not know the name of that person. She did not know him earlier, therefore, she did not tell the name of that person to the police. She did not see the face of that person because the light was switched off. She came to know the name of that person when he was arrested by the police.

33. PW-1 Baby X was further examined on 08.06.2009, but that day also she did not utter even a single word about any threat etc., if any extended by to her. On 21.05.2009 as well as 08.06.2009 her statement was deferred for want of case property, which was sent to FSL. It is pertinent to mention that on 09.11.2009, after receipt of FSL result/case property from FSL, when again her statement was recorded, she has identified the accused. Ms. Madhulika Mohta, Advocate from Delhi Commission for Women was also standing besides her. On that day, PW-1 Baby X has stated that “MAINE PICHLI TARIK PAR ACCUSED UNCLE KO ISLIYE NAHI PEHCHANA THAT KYUNKI INKE RISHTEDAR JO COURT KE BAHAR THE, UNHONE MANA KIYA THA, UNHONE KAHA THA KI TUM ANDAR JAKE BOLNA KI VO NAHI HAI DOOSRA HAI’. On that day, the court had asked the following questions:-

“Court Question:- How do you know that, that person was relative of accused? Did you know his name?

Answer:- No. VO HONGE SHAYAD.

Court Question:- Whether the same relative is present today outside the court room also?

Answer:- ITNA NAHI MUJHE PATA.

Court Question:- What was the reason as to why did not you apprise the court about that relative of accused, who had as per you asked you not to identify the accused, in the court earlier?

Answer:- UNHONE DARAYA THA OR KAHA THA KI JAAN SE MAAR DENGE.

Court Question:- Did you tell about threat to your life by that relative of accused to anyone?

Answer:- No. MERE PAPA BHI MERE SATH HI THE.”

34. PW-1 Baby X has denied the suggestion that she had identified the accused on 09.11.2009 at the instance of her father because he had been asked by the enemies of the accused to falsely implicate him. She has also denied the suggestion that earlier she had not identified the accused and at that time she did not have any threat. It is pertinent to mention that a perusal of record shows that on 14.05.2009 PW-2 Upender Yadav, the father of victim Baby X had appeared along with Women Sub-Inspector Satish Bhati, the investigating officer of this case and moved an application mentioning the fact that in the morning when he left for the court, the persons of accused party did not permit his daughter to appear in the court. He also undertook to produce her daughter Baby X in the court on 21.05.2009. investigating officer was directed to do the needful in order to ensure the protection/security of the victim as well as other public witness. By that time, the accused had already been sent to the judicial custody and the matter was adjourned for the date fixed, i.e. 21.05.2009 and 25.05.2009. on 21.05.2009 Women Sub-inspector

Satish Bhati. PW-2 Baby X was present with her father PW2 Upender Yadav. PW1 Baby X was partly recorded. Order dated 21.05.2009 clearly shows that the court had referred to the application which was moved on 14.05.2009 and it was submitted before the court by PW2 Sh. Upender Yadav that they did not have any kind of threat and pressure and they had come to the court on their own. He had also submitted before the court that his daughter PW1 Baby X also did not have any kind of pressure. He did not have any objection for recording of testimony of her daughter PW1 Baby X on 21.05.2009 in the court. After recording these submissions, the statement of PW1 Baby X was recorded. Now, despite unequivocal statement of PW2 Sh. Upender Yadav on 21.05.2009 before this court, his daughter PW1 Baby X has stated before the court on 09.11.2009 that the relatives of the accused had asked her not to identify the court.

35. The court question put to PW1 Baby X on 09.11.2009 also clearly show that this witness on 09.11.2009 was under some influence to identify the accused, who is not certain about the relatives of the accused. She did not know whether on 09.11.2009 the relatives of the accused were present outside the court room or not. She had even gone to the extent stating that they had threatened to kill her. She has admitted that her father was with her.

36. considering the court record, especially the order dated 14.05.2009 and 21.05.2009, it is clear that on 21.05.2009 when the accused was not identified by PW1 Baby X, her father PW2 SH. Upender Yadav had clearly submitted before the court that they did not have any kind of threat or pressure. They had come on their own. His daughter PW1 Baby X did not have any kind of threat and he did not have objection in case the testimony of PW1 Baby X be recorded on 21.05.2009. PW2 Sh. Upender Yadav had moved an application on 14.05.2009 submitting that accused party did not permit him to appear in the court and on

21.05.2009 he had submitted that they do not have any kind of pressure or threat. It is not clear why PW1 Baby X has taken summons on 09.11.2009 while identifying the accused. On one day she has not identified and on other day she had identified giving explanation of threat and coercion which is not believable in the facts and circumstances of this case as court had specifically asked on 21.05.2009 about any threat or coercion, reason being that on 14.05.2009 an application in this regard was moved. Even Women Sub-Inspector Satish Bhati, Investigating Officer was directed to do the needful in order to ensure the protection/security of the victim as well as other public witness. No such threat or coercion was brought before the court extended on 09.11.2009 when this statement of PW1 Baby X was recorded.

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XXXX XXXX XXXX XXXX

40. As regards the testimony of PW-2 Sh. Upender Yadav is concerned, it is not trustworthy. This witness has deposed that on 08.10.2008 at about 10:30 PM he came back home along with his wife, the door of the house was locked from inside but it was not bolted from outside. There was space in the door in which one could see through the gap. He peeped inside from the gap and saw one boy was committing rape upon her daughter Baby X. He saw that one boy was lying over her daughter Baby X and committing rape. The light of the room was on. He started knocking the door. He knocked several times and after sometime, the door was opened and he saw the accused was inside. There were only Baby X and accused in that room when he saw them inside the room. He apprehended the accused at spot with the help of his wife and informed the police on 100 number.

41. During the course of his cross-examination PW-2 Sh. Upender Yadav has deposed that the distance between his house and shop may be covered within

five minutes on foot. He could not tell the exact distance in meters or kilometers. He has admitted that number of people are living in his neighbourhood and so many people gathered there but they refused to join as witness. He has also admitted that his neighbours Hori Lal and Ashok Sharma, who lives on right and left side of his house, their families were available but no one joined the investigation. He has deposed that he did not call the Pradhan of the colony.

42. PW-6 Smt. Sunita, the mother of PW-1 Baby X has deposed that on the day of the incident, she was at the shop of her husband leaving her daughters at home. It was winter season. On the day of incident at about 10:00 PM/10:30 PM, she left her daughters at home and went to shop to call her husband. Her husband closed the shop and came to the house on his bicycle and she came on foot. As per the testimony of her husband PW-2 Sh. Upender Yadav he has deposed that he came back home with his wife.

XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX

44. As regards the commission of rape is concerned, this witness (PW6) is hear say, as she has deposed that her daughter PW-1 Baby X had told that she was raped by accused.

XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX

47. PW-6 Smt. Sunita has deposed that it took total fifteen minutes for her to leave the house and reach her husband's shop and return home, meaning thereby that within a span of fifteen minutes rape has been committed upon PW-1 Baby X as PW-6 has deposed that it took five minutes for her to reach her husband's shop from their residence and again it took five minutes for returning home from her husband's shop and she stayed at her husband's shop for five minutes. She has also admitted that her husband reached prior to her. She volunteered that her husband came on bicycle. However, as per PW-2 Sh. Upender Yadav he came along with his wife.

XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX

49. If the entrance of the room opens in the room and her husband was knocking outer door of the house which was locked and she opened the main door in presence of public, who gathered there, however, PW-2 Sh. Upender Yadav peeped inside and saw the accused committing rape. It is also fortified as PW-6 Smt. Sunita has deposed that if they see from the outer gate one can see the open space and if they go inside, they can see the gates/doors of the rooms. If the outer gate was closed, how PW-2 Sh. Upender Yadav peeped inside the room which was inside.

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XXXX XXXX XXXX XXXX

52. PW-2 Sh. Upender Yadav has deposed that the light was on in his room, however, PW-1 Baby X has stated on 21.05.2009 that she did not see the face of that person because the light was switched off, meaning thereby that there are two versions about the visibility in the room. As per the case of the prosecution the rape was committed. If the light was switched off, it was not possible for PW-2 Sh. Upender Yadav to peep in and see in darkness as the time was around 10:30PM/11:00 PM in the night and that too in the month of October. If the light was on, as per the testimony of PW-2 Sh. Upender Yadav, then why did PW-1 Baby X state that the light was switched off. It is material contradiction in the testimony of PW-1 Baby X and PW-2 Sh. Upender Yadav.”

21. It was lastly urged on behalf of counsel for the respondent that a plain reading of both the subject DD No.38 Ex.PW.7/A, as well as, the MLC of the minor victim X Ex.PW.14/A clearly goes to show that, it was recorded

therein that a quarrel had taken place at the scene of crime.

22. We have heard learned counsel appearing on behalf of the parties and given our anxious consideration to the evidence on record, including the medical evidence. The two critical issues that arise for consideration in the present appeal are:-

- a) Whether the minor victim X was subjected to rape on the night 08.10.2008;
- b) Whether the prosecution has established the guilt of the respondent for the commission of the sexual offence.

23. Insofar as, the first issue is concerned, there is the clear and unequivocal testimony of the minor victim X herself, in relation to the commission of rape upon her; and the same is unrebutted and trustworthy. It is further observed that the evidence of the minor victim X in this behalf, is further corroborated in essential particulars by the medical evidence on record, which clearly establishes that her hymen was ruptured and her clothes were blood stained at the time of her medical examination at 02:20 a.m. on 09.10.2008 immediately after the commission of the offence. The MLC Ex.PW.14/A further opines that the minor victim X, was yet to attain the age of puberty.

24. Further, in this regard, a plain reading of the FSL reports, Ex.PW.10/A and Ex.PW.10/B show that it was clearly opined therein that human semen was detected from her vaginal swab and blood was detected on the underwear worn by her at the time of commission of the offence.

25. In view of the foregoing, there can be no manner of doubt with the inescapable conclusion that, the minor prosecutrix X was the victim of sexual assault of rape on the night of 08.10.2008. In this behalf, it would also be pertinent to observe that the trial court fell into grave error in not returning any finding in relation to the commission of rape on the minor victim X.

26. That brings us to the equally critical issue of the identification of the respondent as the perpetrator of the crime. In this behalf, it would be pertinent to consider the findings arrived at by the trial court wherein it was held that though the minor victim X PW-1 conclusively narrated the incident, she had failed to identify the respondent. It was further held that the minor prosecutrix X was unable to see the face of the perpetrator since the electric bulb in the room where the offence had occurred was switched off. It was further found by the learned trial court that the subsequent identification of the respondent by the minor victim X PW-1, did not come

to the aid of the prosecution, since her explanation in relation to why she had failed to identify the perpetrator of the crime on earlier dates of trial, did not inspire confidence in the Court. It is also urged that the trial court further recorded in this behalf that, in view of the contrary testimony of Upender Yadav PW-2 , the testimony of the minor prosecutrix PW-1 to the effect that, she had felt threatened on earlier occasions and, therefore, did not identify the respondent then owing to that threat and pressure, was untenable.

27. We are unable to concur with this finding arrived at by the trial court, as above extracted for the following reasons:-

- (i) Firstly, the respondent, including in his statement under Section 313 Cr.P.C., does not deny his presence at the scene of crime i.e. at C-18/B, Lal Kuan, Chungi No.13, New Delhi.
- (ii) Secondly, on a conjoint reading of the testimonies of Upender Yadav PW-2 and Sunita Devi PW-6, the father and mother of the minor victim X, insofar as they relate to their arrival during the commission of the offence by the accused; and his immediate apprehension, from the room where the same was committed, is un rebutted.

- (iii) Thirdly, the detailed explanation given by the minor victim X on 04.11.2019 to the effect that, the relatives of the respondent, who were present outside the court on 21.05.2009 (when she did not identify the respondent), had threatened to kill her, if she identifies him in court — — which appeals to prudence and is eminently reasonable, was erroneously disregarded.
- (iv) Lastly, the testimony of the minor victim X, which by itself was consistent, cogent, coherent and inspires confidence, was further corroborated by the testimony of the other prosecution witnesses PW-2 and PW-6 and the irrefutable fact that the respondent was arrested red-handed from the spot.

28. In this behalf, it would be relevant to observe that the testimony of the parents to the effect that, the respondent opened the door of the room where he was alone with the minor victim X from inside — upon the incessant knocking on the door by the former — has gone unchallenged. There is further no manner of doubt that it was the respondent who opened the door at the scene of crime from inside.

29. The indubitable facts, that the parents of the minor prosecutrix X physically subdued the respondent at the spot and called the police; as well as the physical beatings admittedly received by the respondent from public persons, who simultaneously gathered at the spot at the time of the commission of the crime; are clear, categorical and untraversed in the relevant cross examination. There can also be no quarrel that the medical report qua the respondent Ex.PW.11/A, which opines that a reddish fresh abrasion 2x2 cm was present over his left shoulder, as well as, the FSL reports Ex.PW.10/A and Ex.PW.10/B, which detected semen on his underwear, establish his culpability in the commission of the offence on all fours.

30. In addition, a plain reading of the respondent's response to the incriminating circumstances and material put to him under Section 313 Cr.P.C. demonstrates, that he has offered no cogent explanation, qua his presence at the scene of crime on the fateful day and time, nor has he denied his apprehension from the spot and his subsequent handing over to the police, by the parents of the minor victim X, immediately thereafter.

31. Moreover, the respondent's explanation of being in an inebriated state at the relevant time and suffering injuries on his body, as a result of a scuffle

with a local person, is completely belied by the medical evidence on record, which clearly shows that no alcohol content was detected in his blood, as per MLC Ex.PW.11/A.

32. It is a well settled principle of law that a false plea or a false explanation taken by the accused can be used as an additional link to the chain of circumstantial evidence. **[Reference: Sharad Birdhichand Sarda vs. State of Maharashtra reported as (1984) 4 SCC 116]**

33. It would further be pertinent to point out that, although arguendo there are contradictions, albeit minor, between the testimony of the minor victim X PW-1 and her father Upender Yadav PW-2, insofar as the factum of the electric light being kept on at the time of the commission of the offence is concerned; as well the circumstance, as to whether the parents of the minor arrived together at the spot or separately; in addition also to the question, whether Upender Yadav PW-2, the father of the minor victim X was an eye witness to the commission of rape upon his minor daughter and saw the respondent during the commission of the offence; it is relevant here, to state the well settled legal position that obtains, to the effect that every minor discrepancy or variance in the evidence/testimony, does not have the consequence of making the prosecution's case doubtful — and rather as in

the present case actually lend credence to it — and the courts are jurisprudentially required to adopt a rational approach — instead of being hyper technical — while shifting and weighting the evidence on record. Trivial discrepancies and minor contradictions, ought not to result in the obliteration, of otherwise creditworthy and reliable testimony.

34. In this behalf, we further observe that, there is not even an iota of doubt that the parents of the minor victim X arrived at the scene of crime, at the time of its commission, and knocked on the door of the room, which was locked from inside; and further that, the respondent opened the door — at which time only he along with the minor victim X were present in the room — and emerged therefrom. It is also observed that it is at that critical juncture that the respondent was caught red-handed by the parents, whose contemporaneous entreaties for assistance, resulted in the gathering of persons at the spot, who then proceeded to assault the respondent physically, before handing him over to Head Constable Prahlad Singh PW-12 and Constable Sanjay Kumar PW-13, who had arrived at the spot in response to DD No.38 Ex.PW.7/A.

35. Last but not the least, the accused has completely failed to explain why he has been falsely implicated in the case on behalf of either the minor

victim X, her parents or the police.

36. It would also be relevant to observe that, it has been established by the prosecution beyond doubt that, the prosecutrix was a minor at the time of commission of the ghastly crime of rape upon her and that she was yet to attain the age of puberty.

37. In view of the foregoing discussion, we are of the considered view that the second issue qua the culpability of the respondent in the commission of the offence of rape upon the minor victim X, is duly proved and established against him by the evidence on record.

38. Before we part, it is also incumbent upon us to observe that, the findings arrived at by the trial court to the effect that the testimony of the minor victim X is influenced, tutored and not reliable and that she failed to identify the respondent as the perpetrator initially, whereby rendering his subsequent identification by her, full of doubt; is without any proper justification and contrary to the evidence on record, including her reasoned explanation, as aforementioned. The testimonies of the other prosecution witnesses also corroborate that of the minor victim X, as does the clinching medical evidence elaborated hereinabove. The minor victim X, aged 11 years, has been consistent in her statement and her testimony from the time

of the commission of the offence, and has also clearly and cogently explained the threat perception of fear and intimidation felt by her in not making a physical identification of the respondent at the earlier stage of her examination. The testimony of the minor victim X cannot be negated on the ground of benefit of doubt afforded to the respondent, which benefit of doubt in our considered view is on an erroneous mis-appreciation of the evidence on record. We are supported in our view by the decision of the Hon'ble Supreme Court in State of H.P. vs. Lekhraj reported as (2000) 1 SCC 247, wherein it was observed that although the benefit of every reasonable doubt should be given to an accused, but at the same time the court ought not to reject evidence, which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

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

conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment..

[Reference: *State of Rajasthan vs. Om Prakash* reported as (2002) 5 SCC 745]

40. In our view, therefore, the impugned judgment dated 18.07.2011 is a total negation in the quest for search of truth and overlooks the cardinal principle that the decision of a judge presiding over a criminal trial is not merely to see that no innocent person is punished, but also to see that a guilty person does not escape; and that, both these public duties are equally important.

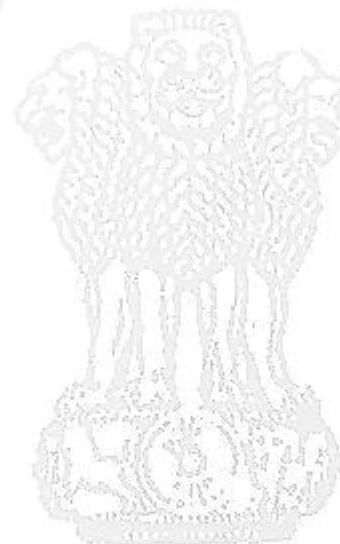
41. In the circumstances, resultantly, the acquittal of the respondent herein in relation to the commission of the offence punishable under Sections 376/506 IPC in relation to FIR No.560/08, Police Station- Sangam Vihar vide the impugned judgment dated 18.07.2011 rendered by the the learned Additional Sessions Judge-01, Designated Judge : TADA/POTA/MCOCA, Saket Courts, New Delhi in Sessions Case No.13/09, titled as '*State vs. Amar Pal*'; is set aside, and the respondent herein is convicted for the proved commission of the offences punishable under Sections 376/506 IPC; and is further directed to be taken into custody forthwith.

42. With the above directions, the appeal is disposed of. A copy of this judgment be sent to the respondent convict forthwith.

**SIDDHARTH MRIDUL
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

DECEMBER 09, 2019
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