



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 12.04.2022

Pronounced on : 18.07.2022

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+ CRL.A. 1288/2019

PARSU RAM

.....Appellant

Through : Mr. Sumeet Verma and Mr.
Mahinder Pratap Singh, Advocates.

versus

STATE

..... Respondent

Through : Mr. Ashish Dutta, APP for the State
with Inspector Kuldeep, P.S.:Kirti
Nagar.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this Judgment, we shall dispose of the present appeal U/s 374(2) of the Code of Criminal Procedure which has been filed against the Judgment of Conviction dated 22.05.2019 and Order on Sentence dated 03.07.2019 passed by the Addl. Sessions Judge-01, West, Special Court under the POCSO Act, Tis Hazari Courts, Delhi vide which appellant Parsu Ram has been convicted U/s 363/34 IPC, 376 IPC and U/s 308 IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a sum of Rs.10,000/- as fine for the offence U/s 363/34 IPC and in



default of payment of fine, simple imprisonment for a period of one year. He has been further sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 25,000/- U/s 308 IPC and in default of payment of fine, simple imprisonment for a period of one year. He has also been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,00,000/- U/s 376 IPC and in default of payment of fine, simple imprisonment for a period of one year. Further, the appellant has been directed to pay compensation of Rs. 2,00,000/- to the prosecutrix and in default of payment of the same, he shall undergo simple imprisonment for a period of two years.

2. In brief, the case of the prosecution is that on 24.02.2012 at about 08:00 p.m. in front of A-383, Harijan Camp, Chuna Bhatti, Kirti Nagar, Delhi, appellant Parsu Ram and his co-accused Saroj in furtherance of their common intention, kidnapped PW-4 Ms.X (the minor prosecutrix aged about 06 and a half years) from the lawful custody of her parents (PW-2 and PW-3) without their consent and in the night of 24.02.2012 near Shanti Mandir, Saraswati Garden, Delhi, appellant Parsu Ram committed rape upon Ms. X, the minor prosecutrix and secondly on the said date, time and place, appellant Parsu Ram inflicted injuries on the person of Ms. X, with such intention or knowledge and under such circumstances, that if by that act he had caused the death of aforesaid Ms. X, he would have been guilty of culpable homicide not amounting to murder.



3. After the completion of the investigation, challan was filed before the court of Metropolitan Magistrate, who after completing all the formalities committed the case to the Court of Sessions for trial.

4. Vide order dated 25.09.2012, charge for the offences U/s 363, 376, 308 and 34 IPC was framed against the appellant to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution has examined 16 witnesses.

5. We have heard the Ld. counsel for the appellant, Ld. APP for the State and have also gone through the records of this case.

6. It is submitted by the Ld. counsel for the appellant that the Ld Trial Court has failed to appreciate the contradictions in the testimony of the victim, who in her three statements i.e. one recorded U/s 161 Cr.P.C., other U/s 164 Cr.P.C. and her examination-in-chief has given different versions, therefore, the victim is not a reliable witness which renders the entire case of the prosecution unbelievable and improbable. He further submitted that the Ld. Trial Court has failed to appreciate the contradictions in the statements of the mother of the victim (PW 2) who has given different versions in her examination in chief and in her cross examination with regard to the recovery of the victim, therefore, this witness is also not a truthful witness. He further submitted that there is unexplained delay in the registration of the FIR. He further submitted that the medical evidence does not support the case of the prosecution because as per the MLC the hymen of the prosecutrix "seems to be torn" and there are no definite findings in this regard. He further submitted that the Ld. Trial Court in the order on CRL.A. 1288/2019



sentence dated 03.07.2019 has not mentioned as to whether the sentence awarded to the appellant is to run concurrently or consecutively. Lastly, it is argued that the prosecution has failed to prove its case beyond reasonable doubt and the appellant deserves to be acquitted.

7. On the other hand, it is submitted by the Ld. APP for the State that there is no infirmity in the impugned judgment and on the basis of the oral as well as documentary evidence produced and proved on record the prosecution has been able to prove its case beyond the shadow of doubt. It is further submitted by the Ld. APP that the victim is a child and she has totally supported the case of the prosecution and even if there are contradictions in the testimony of the victim, her entire testimony cannot be discarded. It is further submitted by the Ld. APP that the Ld. Trial Court while recording the testimony of the victim in the Court has categorically asked the victim during the course of her examination-in-chief as to what she meant by "Ganda Kaam", which has been explained by the victim and even if, the Ld. Magistrate who recorded the statement U/s 164 Cr.P.C had not sought the clarifications with regard to the "Ganda Kaam" as stated by the victim during the course of recording of her statement U/s 164 Cr.P.C, it was for the magistrate to have got the same clarified and the magistrate had failed in her duty and the benefit of the same cannot go to the appellant, looking into the seriousness of the offence. It is further submitted by the Ld. APP that the testimony of the victim is corroborated by the medical evidence on record and other public witnesses examined by the prosecution



who duly supported the case of the prosecution and the minor contradictions in their testimonies does not shake the entire case of the prosecution.

8. The prosecution in order to prove its case, has examined 16 witnesses and out of these 16 witnesses, testimonies of PWs 1, 9, 11, 12, 13 and 15 remains uncontroverted and unrebutted as they have not been cross examined.

9. The statement of the appellant was recorded U/s 313 Cr.P.C. in which the appellant stated that he has been falsely implicated and that the victim is mentally challenged and he had neither kidnapped the victim nor raped her nor tried to kill her.

10. The material witnesses in this case are PW-4 (prosecutrix), PW-2 Ms. Y (mother of the prosecutrix), PW-3 Mr. Z father of the prosecutrix, PW-12 Dr. Amey and PW-13 Dr. Shashi Pratap Singh.

11. At the outset, it is to be kept in mind that in the instant case, the victim is a child who was around six and a half years of age at the time of the incident and there is no challenge from the side of the appellant in this regard. In the instant case, the most material witness of the prosecution is the victim PW 4 and it needs no elaboration that the conviction can be based even on the un-corroborated evidence of the prosecutrix, if the same inspires confidence.

12. In **2007 CrI.L.J. 4704 Radhu vs. State of Madhya Pradesh** it has been observed as follows:-



"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."

13. The present case is the one with the allegations of rape/sexual offence and in these circumstances, ingredients of the offence must be considered. Reference can be made to Medical Jurisprudence and Toxicology (Twenty First Edition) by Modi at page 369 which reads as follows :



"Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one"

14. In **Madan Gopal Kakkad v. Naval Dubey [1992] 2 SCR 921**] it has been observed as follows :-

"38. In Parikhs Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

Sexual intercourse: In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.

39. In Encyclopedia of Crime and Justice (Vol. 4) at page 1356, it is stated:

...even slight penetration is sufficient and emission is unnecessary.



Therefore, absence of injuries on the private parts of a victim specially a married lady cannot, ipso facto, lead to an inference that no rape has been committed."

15. In **AIR 1923 Lah 536 Regina vs. Ferrol; Natha**, the court had ruled that to constitute an offence under section 375 IPC, there must be evidence of penetration, which may occur and the hymen may remain intact. Vulval penetration is sufficient to constitute rape in India without actual seminal emission.

16. In **MANU/SC/0080/1978 : 1978 Cri.L.J. 1804 Dr. S.P. Kohli, Civil Surgeon, Ferozpur vs. High Court of Punjab & Haryana through Registrar**) it has been observed that for the offence of rape to be complete, it is essential to establish even slightest penetration.

17. In **2008 (2) JCC 2079 : MANU/SC/7825/2008 Moti Lal vs. State of M.P.**, the Apex Court had observed that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault -- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The court, therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. **The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.**



18. Now the evidence of PW 4 (prosecutrix) is to be analyzed on the basis of the above mentioned settled propositions of law.

19. The victim has been examined in the Trial Court as PW 4 and she has deposed as follows:

"On that day, first I had gone to the shop to bring candle and thereafter to bring some namkeen. At that time, it was evening time. From the shop I was taken by uncle of Babita saying he would give me biscuit. First he took me to his house and then to ganda nala. The mother of Babita was also with that uncle at that time. The child has been asked to identify the uncle and mother of Babita and she has pointed out towards the accused persons. At ganda nala the uncle of Babita burnt me with the cigarette on my stomach and he also hit me on my head with a stone. Then uncle of Babita removed my underwear Kachhi and did "GANDA KAAM" with me. The child has explained the GANDA KAAM that accused put his urinating organ into her urinating organ. I had cried at that time and became unconscious and I became conscious in the PS. I was taken to hospital and treated. My statement was also recorded by the lady judge and I had narrated all the facts....."

20. The victim was cross examined by the Ld. counsel for the appellant and in her cross examination she stated as follows :

"....Accused Parsu Ram had taken me first to his room for some time but I was not beaten or molested there. I had asked the accused where I was being taken on which he asked me to remain silent otherwise he would hit me by knife. There was nobody at the nala at that time nor there was any house or shop there. I did not cry when accused burnt me and hit by stone. I had become unconscious.....I had consumed the namkeen bought



from the shop. The accused had not given me anything to eat. I do not know the name of the mother of Babita but I know her. She has never visited our house in my presence. For half of the distance towards nala Babita's mother had accompanied me and accused Parsu Ram and thereafter she left. The mother of Babita (accused Saroj) did not speak to me nor scolded anywhere. Accused Saroj has not met me in the house where the accused Parsu Ram has taken me and she has met me on the way. It is wrong to say that accused Parsu Ram has been falsely implicated by me at the instance of my mother on account of some dispute regarding jhuggi and water problem in the area....."

21. The analysis of the testimony of the prosecutrix (PW 4) clearly indicates that she has narrated the incident in very clear terms. The prosecutrix identified the appellant during her examination in the Court and categorically stated that **she was taken away by the appellant who took her near Ganda Nala, burnt her with a cigarette and hit her with a stone.** In her examination-in-chief, the victim has categorically stated that the appellant has done "**Ganda Kaam**" and she went on to explain as to what she meant by "**Ganda Kaam**".

22. There is no cross examination on this point on behalf of the appellant except a suggestion that the appellant has been falsely implicated at the instance of the mother of the victim as there was some dispute regarding jhuggi and water problem in the area. Therefore, this part of the examination-in-chief of the victim, where she describes the sexual act committed by the appellant against her has gone unrebutted and unchallenged. As far as the contention of the Ld. counsel for the appellant



that there are inconsistencies in three statements of the victim recorded U/s 161 Cr.P.C., 164 Cr.P.C. and her examination in chief in the court, we have carefully perused all the statements of the victim, and the inconsistencies as pointed out in her statements are inconsequential and does not go to the root of the case, so as to dislodge the otherwise credible testimony of the victim i.e. PW 4. The Court is competent enough to sift the chaff from the grain and on perusal of the testimony of PW 4, it is clear that she has given a natural and detailed narration of the events which has taken place with her, the victim has also clearly stated the manner in which the appellant caused injuries to her.

23. It cannot be ignored that the victim on the date of the incident was a child of six and a half years and there are bound to be some variations in her statement. No witness is expected to narrate in a parrot like manner and even the non narration in a parrot like manner gives credence to the testimony of the witnesses. So, we find nothing in the testimony of the victim to discard the same.

24. The testimony of the victim finds support from the medical evidence on record. The MLC of the victim is Ex. PW 12/A which clearly shows that the victim has multiple injuries and a lacerated wound on her forehead which is a vital part of the body and as per the MLC, there is history of bleeding from her left ear. The victim in her examination-in-chief as well as her cross examination categorically stated that the appellant has burnt her and hit her by a stone and this version of the victim finds corroboration from



her MLC Ex. PW 12/A as well as evidence of Dr. Amey and Dr. Shashi Pratap Singh who have been examined as PW 12 and PW 13 respectively.

25. As per the MLC of the victim, the Dr. opined that hymen "seems torn" and "rape might be attempted". As both the doctors have not been cross examined on behalf of the appellant, so their testimonies have gone unrebutted and unchallenged on this aspect of the case. Even otherwise, the medical evidence is opinion based and the same is to be read in conjunction with other evidence on record. As already observed hereinabove, the victim "X" in her testimony has categorically narrated the sequence of events and the manner in which the incident has been committed by the appellant, and the same also finds support from the MLC.

26. It is equally well settled that if satisfied that the testimony of the child witness is a voluntary expression of what transpired and is an accurate impression of the same, no corroboration of the testimony is required. The Supreme Court has repeatedly ruled that there is no rule of practice that the evidence of a child witness needs corroboration and stated that conviction can be based on it. It is only as a rule of caution and prudence that the court may require that it would be desirable to have corroboration from other dependable evidence. (Ref : ***Dattu Ramrao Sakhare & Ors. vs. State of Maharashtra*** MANU/SC/1185/1997 : (1997) 5 SCC 341; ***Suryanarayana vs. State of Karnataka*** 2001 (1) JCC 74 : MANU/SC/0001/2001 : 2001 CriLJ 705).



27. The manner in which evidence is required to be assessed by the courts has been laid down in a catena of decisions from **MANU/SC/0037/1952 : AIR 1952 SC 353 *Hanumant vs. The State of Madhya Pradesh***.

28. The statement of the prosecutrix U/s 164 Cr.P.C. Ex. PW4/A was recorded by the Magistrate after duly satisfying herself with regard to the competency of the prosecutrix to make the statement and at the end of the statement the Magistrate has appended a certificate, certifying the statement made by the prosecutrix. No doubt, the victim in this statement has stated that the appellant started doing "Ganda Kaam" with her but it was for the Ld. Magistrate to clarify as to what "Ganda Kaam" the appellant did with her but the Magistrate chose not to do so and did not exercise the powers vested in her U/s 165 of the Indian Evidence Act 1872, which enables the judge to put questions to a witness, however, when the victim appeared in the Sessions Court for recording her testimony, it was clarified in her examination-in-chief as to what "Ganda Kaam" was done by the appellant. Therefore, looking into the testimony of the victim and discussions mentioned hereinabove, it cannot be said that the "Ganda Kaam" remained un-explained and in our opinion, no benefit can be given to the appellant on this score as the same has been duly and categorically explained by the victim in her examination-in-chief. Therefore, we are of the opinion that the testimony of PW 4 (Victim) is creditworthy and reliable and we have no hesitation in coming to the conclusion that it is the appellant and none else who has perpetrated the alleged crime on the minor victim.



29. Now coming to the testimonies of the parents of the victim who have been examined as PW 2 and PW 3, and it is to be seen as to whether their testimonies are reliable or not or whether the inconsistencies in their testimonies go to the root of the case, in order to dislodge the case of the prosecution as argued by the Ld. counsel for the appellant.

30. As regards the reliability of the testimonies of PW 2 and PW 3 (parents of the victim) are concerned, the Ld. Trial Court has observed as follows :

"As regards the evidence of Ms. Y, mother of the prosecutrix (PW-2) and Mr. Z, father of the prosecutrix (PW-3), it may be observed that their evidence is consistent regarding Ms. X, prosecutrix (PW-4) going missing went she had gone out of the house and was not found. They had searched for her but when she was not found, on the next day i.e. on 25.02.2012, they had gone to the Police Station and the complaint (Ex. PW 3/A) was made. Then, they along with the police had searched for Ms. X and at about 05:00 pm, when they reached Ganda Naala, Shani Mandir, Sarawati Garden, she was found in naked and bad condition in the park near the big stones of construction and she had blood on her face. She had injury on her forehead and burn marks on her body. She was in semi conscious state."

31. PW 2 and PW 3 who are the parents of the victim have narrated the manner in which they started looking for their missing daughter i.e. victim and how the victim was recovered on 25.02.2012 from Ganda Nala, Shani Mandir, Saraswati Garden. No doubt, there are some improvements in the testimony of the mother of the victim who in her examination in chief has stated that she alongwith her husband PW 3 and police officials had gone in



search of the prosecutrix and at about 5:00 p.m. near Ganda Nala, Shani Mandir, Saraswati Garden, the prosecutrix was found in unconscious condition and was naked and having injury marks on her head and face. She further deposed in her examination-in-chief that the victim was having burn marks on her body. But in her cross examination she has stated that after her daughter went missing, she was seen by her for the first time in the police station Kirti Nagar when she was recovered and that she has not seen her daughter at the Nala in injured condition. She has further stated that she has seen the victim in the police station. Now this inconsistency in her statement according to the Ld. counsel for the appellant is sufficient to disbelieve the case of the prosecution. In our opinion, the answer is no because the testimony of PW 3 who is the father of the victim is corroborated by the testimony of PW 8 Ct. Jaswant and PW 14 SI Rampal Singh (IO) as according to all these three witnesses the place of recovery of the victim is Shani Mandir, Sarawati Garden and simply because there are some inconsistencies in the testimony of PW 2 as pointed out by the Ld. counsel for the appellant mentioned hereinabove, it cannot be said that the same are sufficient to disbelieve or dislodge the case of the prosecution. PW 2, mother of the victim has primarily spoken about the place of recovery of victim like other PWs i.e. PW 3, father of the victim, PW-8 Ct. Jaswant and PW 14 SI Rampal Singh (IO). The other recovery witnesses have corroborated each other and there is no reason to disbelieve them simply because PW 2 has somewhat faltered on this point. The prosecution, in our opinion, has been clearly able to establish that the victim was recovered from Shani Mandir Saraswati Garden.



32. It has also been argued by the Ld. counsel for the appellant that there is a delay in lodging the FIR and the same has been lodged after due deliberation and consultation in order to falsely implicate the appellant as the parents of the victim wanted to grab the jhuggi of co-accused Ms. Saroj.

33. As per the case of the prosecution, the incident occurred on 24.02.2012 at about 8:00 p.m. and according to PW 2 and PW 3 who are the parents of the victim, when their daughter did not return home they had gone to the police station Kirti Nagar and informed the police about the missing of the victim and sought help. The Ld. trial Court has dealt with the issue of delay in registering the FIR and has made the following observations :

"DELAY IN FIR

52. The contention of the counsel for accused Mr. Parsu Ram and Amicus Curiae for accused Ms. Saroj that there was a delay in lodging of the FIR which is fatal is now being taken into consideration. It has been submitted that the FIR was lodged by the prosecutrix after due deliberation and consultation.

53. The contention of the prosecution is that there is no delay in lodging the FIR as Mr.Z, father of the prosecutrix (**PW-3**) informed the police about the missing of Ms.X, prosecutrix (**PW-4**) at the earliest.

54. The alleged incident occurred on 24.02.2012 at about 08:00 pm when Ms.X, prosecutrix (**PW-4**) was found missing, as per the complaint (**Ex.PW3/A**) made by Mr. Z, father of the prosecutrix



(PW-3) and the FIR (Ex.PW1/A) which was registered on 25.02.2012 at 17:05 hours (05:05 pm). DDNo.19 A (Ex.PW14/A) was recorded at 03:40 pm on 25.02.2012 regarding the PCR call informing about the missing of the prosecutrix.

55. The delay in lodging the report raises a considerable doubt regarding the veracity of the evidence of the prosecution and points towards the infirmity in the evidence and renders it unsafe to base any conviction. Delay in lodging of the FIR quite often results in embellishment which is a creature of after thought. It is therefore that the delay in lodging the FIR be satisfactorily explained. The purpose and object of insisting upon prompt lodging of the FIR to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well the names of eye witnesses present at the scene of occurrence.

56. It is not that every delay in registration of the FIR would be fatal to the prosecution. Once the delay has been sufficiently explained, the prosecution case would not suffer. However, it is necessary for the Courts to exercise due caution particularly in the cases involving sexual offences because the only evidence in such cases is the version put forwarded by the prosecutrix.

57. In the case reported as State of Rajasthan v. Om Prakash. (2002) 5 SCC 745, the Hon'ble Supreme Court has held that in case where delay is explained by the prosecution in registering the case,



the same could be condoned moreover when the evidence of the victim is reliable and trustworthy.

58. Similar view was taken in **Tulshidas Kanolkar v. The State of Goa. (2003) 8 SCC 590**, wherein it was held by the Supreme Court as follows:

"The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstances for the accused when accusation of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding 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 a case if the prosecution fails to satisfactory 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 prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so the mere delay in lodging of first



information report does not in any way render prosecution version brittle."

59. In the judgment reported as **Devanand v. State (NCT of Delhi). 2003 Cri.L.J. 242**, the Hon'ble High Court of Delhi has observed as follows:

"The above said statement clearly show that at the earliest opportunity the prosecutrix had not made any complaint to her mother in this regard. Reading of the examination-in chief reveals that first time she was raped as per her own version after about 30 - 36 days of coming of the appellant but in any case she admits that she has been raped many a times and she only complained to her mother few days after he had left. The appellant stayed in the house of the prosecutrix for more than year."

60. Further, the Hon'ble High Court of Rajasthan in the judgment reported as **Babu Lal and Anr v. State of Rajasthan, Cri.L.J. 2282**, has held as under:

"No doubt delay in lodging the FIR in sexual assault cannot normally damage the version of the prosecutrix as held the Hon'ble Supreme Court in various judgements but husband of the prosecutrix is there and report is lodged after one and half months, such type of delay



would certainly be regarded as fatal to the prosecution case"

61. The Hon'ble High Court of Madhya Pradesh in the judgment reported as **Banti alias Balvinder Singh v. State of Madhya Pradesh, 1992 Cr.L.J. 715**, has held as under:

"in conclusion, having regard to the conduct of the prosecutrix in not making any kind of complaint about the alleged incident to anybody for five days coupled with late recording of report by her after five days with false explanation for the delay, in the context also of the Lax Morals of the Prosecutrix, it is very unsafe to pin faith on her mere word that sexual intercourse was committed with her by five accused persons or any of them. It is also difficult to believe her version regarding the alleged abduction in jeep. In the circumstances it must be held that the prosecutrix story was not satisfactorily established"

62. Turning to the facts of the present case, it transpires that Mr.Z, father of the prosecutrix (PW-3) has deposed that *"...When I came back from my duty, I along with my wife searched for my daughter in the area but she could not be traced throughout the night. We also approached the police station Kirti Nagar. Police officials also helped in search of the prosecutrix but she could not*



be traced. On the next day on 25.02.2012, I lodged complaint Ex.PW3/A...."

63. Ms.Y, mother of the prosecutrix (PW-2) has deposed that *"....I do not remember the exact date but the incident took place few days before Holi last year (February 2012). She did not return back till night and then we searched her in the area but she was not traceable throughout the night. On the next day also, I alongwith my husband and police officials again went in search of my daughter and at about 5 PM at near Gandha Nala, Shani Mandir, Saraswati Garden, the prosecutrix was found...."*

64. Both the parents of the prosecutrix (PWs 2 and 3) have been cross examined on behalf of both the accused persons at length but nothing material for the accused could be brought forth which could show that the complaint is manipulated or made after deliberations and consultations or that the delay of one day is fatal. The case of the prosecution is that the prosecutrix went missing on 24.02.2012 and the FIR was registered on 25.02.2012. The fact that the FIR was not registered on 24.02.2012 itself has been satisfactorily explained by the parents of the prosecutrix by deposing that they had searched for the prosecutrix themselves but when she was not found, then eventually they had gone to the police.

65. There is apparently no delay which can be fatal in the registration of the FIR. Nothing is shown by the accused which could indicate that the possibility of the complaint being motivated or

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manipulated and the version of the prosecutrix being false and tutored exists. It cannot be said that there is possibility that the FIR was lodged after due deliberation and consultation as the parents of the prosecutrix wanted to grab the jhuggi of accused Ms Saroj as the same is too trivial a reason for false implication of the accused in such a heinous case.

66. Therefore, it cannot be said that the FIR was lodged after a delay which is fatal to the prosecution story. There is no delay in the registration of the FIR and the reason for registration of the FIR on 25.02.2012 instead of 24.02.2012 has been logically explained by the parents of the prosecutrix as well as the prosecution."

34. After going through the impugned judgment, specially, where the Ld. Trial Court has dealt with the question of delay in lodging the FIR and also having gone through the testimonies of PW 2 and PW 3 who are the parents of the victim, we are of the opinion that the delay in lodging the FIR has been well explained by the prosecution as rightly observed by the Ld. Trial Court.

35. Therefore, as far as the offence of rape committed by the appellant is concerned, the prosecution has been able to prove the same beyond reasonable doubt.

36. The appellant in the instant case has also been convicted U/s 308 IPC. So, now it is to be seen as to whether the act of the appellant causing injuries



on the person of the victim, attract ingredients of offence under [Sections 308 IPC](#). In order to constitute an offence under [Section 308 IPC](#), it is to be proved that the act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death he would have been guilty of culpable homicide. Intention or knowledge, on the part of the accused, is to be deduced from the circumstances in which injuries had been caused as also the nature of injuries and the portion of body where such injuries were suffered.

37. Here, the testimony of PW-13 Dr. Shashi Pratap Singh who medically examined the prosecutrix/victim on 25.02.2012 becomes relevant. PW-13 Dr. Shashi Pratap Singh in his testimony has deposed as follows:

"On 25.02.2012, I was posted as SR in Neuro Surgery Department in DDU Hospital. On that day, prosecutrix was referred to the neuro surgery department after her primary examination in the casualty. Patient had history of left ear bleeding. Patient had no history of loss of consciousness or vomiting or seizure. On examination, patient was found to be conscious and obeying commands, there was no sensory motor deficit and there was no active ear bleeding. Patient was advised NCCT (CT Scan) and the same was done in LNJP Hospital and the report of her CT Scan was normal, as per the Radiological department of LNJP who conducted CT Scan. Based on the history, clinical examination and the report of CT



Scan, I have opined the injury as ‘Simple’. My findings on the MLC of the prosecutrix which is already Ex.PW12/A are on back side of Ex.PW12/A and encircled as ‘X’ bearing my signatures at Point B.”

38. PW-2 who is the mother of the victim deposed that the victim was found lying unconscious on the ground near Gandha Nala, Shani Mandir, Saraswati Graden. The victim was naked and had injury marks on her head and face. She also had burn marks on her body. Similarly, PW 3 who is the father of the victim deposed that on reaching Gandha Nala, Shani Mandir, Saraswati Garden, the victim was found lying in the park near the big stones of construction. The victim was in a bad condition and she had blood on her face. The victim was naked and there were injury wounds on her forehead and cigarette burns on her body. The victim was in a semi-conscious state. PW 14 SI Rampal Singh who is the IO of the case deposed that the victim was found sitting on the pavement at Saraswati Garden and her mouth was with blood and there were burn marks of cigarette on her body. The most material witness in respect of the injuries received by the victim is the victim herself who has been examined as PW-4. She has categorically deposed that the appellant told her to remain silent and threatened her with a knife and the appellant also gave cigarette burns on her stomach and hit her head with a stone.

39. As per the testimony of PW 13 Dr. Shashi Pratap Singh who medically examined the victim, the patient had history of left ear bleeding and based on the history, clinical examination and the report of CT Scan, he



opined the injury as "simple". As per the victim (PW-4) the appellant had hit her head with a stone. It is not the case of the victim that the appellant had hit her head with the stone repeatedly to cause her death. Therefore, in view of the testimonies of PW-13 Dr. Shashi Pratap Singh and Victim (PW-4) we are of the view that merely because the victim had stated that the appellant gave cigarette burns on her stomach and hit her head with a stone, it cannot be said that such an injury was caused with the intention to commit culpable homicide not amounting to murder.

40. In our view, in the facts and circumstances of this case and the nature of injury which has been opined to be "simple" shows that there was no intention or knowledge on the part of the appellant/accused to cause such injuries, which would have resulted in the death of victim/prosecutrix. The material before the learned Additional Sessions Judge, in our view, was not such which could give rise to grave suspicion against the appellant of his having the intention or knowledge to cause such injuries, that had it caused death of victim/prosecutrix, he would have been guilty of culpable homicide not amounting to murder. Thus, we are of the opinion that ingredients of offence under [Sections 308 IPC](#) are not attracted in the present case. Consequently, the conviction of the appellant under Section 308 IPC would not be justified. However, it is clear from the evidence on record that the appellant had caused simple injury to the victim/prosecutrix. Therefore, in the facts and circumstances of the case, the appellant is likely to be convicted under Section 323 IPC for causing hurt to the victim/prosecutrix.



41. For the reasons stated hereinabove, while acquitting the appellant of the charge under Section 308 IPC, he is convicted under Section 323 IPC. The appellant is accordingly sentenced to undergo rigorous imprisonment for a period of six months under Section 323 IPC.

42. Ld. counsel for the appellant has relied upon the following judgments:

- (a) Krishan Kumar Malik Vs. State of Haryana [(2011) 7 Supreme Court Cases 130].
- (b) State of Haryana Vs. Shamsheer Singh [2006 (3) RCR (Criminal) 345].
- (c) State of Uttar Pradesh Vs. Ram Veer Singh & Ors. [AIR 2007 Supreme Court 3075]
- (d) Sharad Birdi Chand Sarda Vs. State of Maharashtra [1984 SCC (4) 116]
- (e) Swaran Singh Ratan Singh Vs. State of Punjab [AIR 1957 SC 637]
- (f) Santosh Prasad @ Santosh Kumar Vs. State of Bihar [2020 (3) SCC 443] and Narra Peddi Raju Vs. State of A.P. now State of Telangana (Crl. A No. 1553/2019).

43. We have perused the above judgments. There is no dispute with regard to the propositions of law laid down in the said judgments but with due regards to the same, the same are not applicable to the facts of the present case as in the instant case, the prosecution has brought on record substantial and trustworthy evidence and the case in hand is not a case where



the testimonies of the witnesses examined by the prosecution are not credit worthy and the star witness of the prosecution in the instant case is the minor victim who has been examined as PW 4 and has fully supported the case of the prosecution.

44. One of the other contention of the Ld. counsel for the appellant is that the Ld. Trial Court in the order on sentence dated 03.07.2019 has not mentioned as to whether the sentence awarded to the appellant is to run concurrently or consecutively.

45. We are of the view that it was necessary for the Ld. Sessions Judge to have ensured the compliance of Section 31 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code), when she convicted and sentenced the appellant for more than one offence in a trial. It was necessary for the Ld. Sessions Judge to have specified in the order by taking recourse to Section 31 of the Code as to whether the punishment of sentence of imprisonment so awarded by her for each offence would run concurrently or consecutively. In view of the above, it is ordered that all the sentences awarded to the appellant by the Ld. Sessions Judge vide order on sentence dated 03.07.2019 would run "concurrently". Reliance can be placed upon ***Gagan Kumar Vs. The State of Punjab, Criminal Appeal No. 266 of 2019 (Arising out of S.L.P.(Crl.) No. 10727 of 2018*** decided by the Supreme Court of India on 14 February, 2019.

46. In view of the discussions mentioned hereinabove, we find no infirmity in the impugned judgment dated 22.05.2019 and order on sentence dated 03.07.2019, as far as it relates to the conviction and sentence of the CRL.A. 1288/2019



appellant U/s 363/34 IPC and 376 IPC. However, as far as the conviction and sentence of the appellant U/s 308 IPC is concerned, the appellant is acquitted of the charge U/s 308 IPC and instead he is convicted U/s 323 IPC and sentenced to undergo rigorous imprisonment for a period of six months under Section 323 IPC. All the sentences to run concurrently.

47. In view of the above observations, the present appeal is disposed of on above terms. All pending applications (if any) are disposed of. Trial court record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

SIDDHARTH MRIDUL, J

July 18, 2022

Sumant

न्यायमेव जयते