

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-773-DB-2013 (O&M).
Date of Decision: 10.08.2023.

Ran Bahadur

VERSUS

State of Haryana

....Appellant.

....Respondent.

CORAM : HON'BLE MR. JUSTICE B.S. WALIA
HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. Gagan Mohini, Advocate (Legal Aid Counsel)
for appellant.
Mr. Surender Pannu, Additional Advocate General, Haryana.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant-convict Ran Bahadur, impugning the legality of judgment of conviction dated 09.05.2013 and order on quantum of sentence dated 14.05.2013 rendered by learned Additional Sessions Judge, Faridabad, in terms of which, he was held guilty and convicted for the commission of offence punishable under Sections 376 and 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), in case FIR No.160 dated 30.10.2012 under Sections 376 and 506 IPC, Police Station Tigaon, District Faridabad and sentenced as under:-

Offence	Rigorous Imprisonment	Fine	In default
376 IPC	Life Imprisonment	Rs.10,000/-	02 months Simple Imprisonment
506 IPC	06 months	Rs.500/-	07 days Simple Imprisonment
4 POCSO Act	Life Imprisonment	Rs.10,000/-	02 months Simple Imprisonment

All the sentences shall run concurrently.

2. As per prosecution version, on 30.10.2012, complainant-Yusuf Khan accompanied by prosecutrix (name not disclosed in view of law laid down in case "**State of Punjab** vs. **Gurmit Singh**" 1996(1) R.C.R. (Criminal) 533), aged 13 years and her mother Maya Devi, made a complaint (Ex.P/6) against appellant (father of prosecutrix), stating that he is resident of 1J-35 NIT, Faridabad, and he is running a workshop for making aluminium doors in village Jasana for the last three years. Appellant having a tenanted premises in village Jasana is working in his workshop and the said appellant is blessed with three daughters and three sons and eldest of his daughter is prosecutrix aged 13 years and name of his wife is Maya Devi. On 30.10.2012 at about 10:00 AM, when he (complainant) came to his workshop, Anil son of Lekhraj informed him that appellant used to rape his own daughter for the last one year. Above said fact was told to Anil by Maya Devi, mother of prosecutrix, and when he (complainant) enquired the matter from Maya Devi, she disclosed that appellant used to rape his daughter (prosecutrix) for the last ten (10) months while threatening to kill her at knife point. On the basis of these allegations, FIR (Ex.P/10) was registered. Statement of prosecutrix was recorded and thereafter she was medico-legally examined, vide Medico-Legal Report (Ex.P/9). Vaginal swabs of prosecutrix were taken and the same were sent to Forensic Science Laboratory, Madhuban (hereinafter referred to as "FSL"), for analysis. Rough site-plan (Ex.P/12) of place of occurrence was prepared. Appellant was arrested on 31.10.2012 and he was medico-legally examined, vide Medico-Legal Report (Ex.P/1). Scaled site-plan of place of occurrence (Ex.P/8) was prepared. Statements of witnesses were recorded. After

completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against appellant in the Court for the commission of offence punishable under Sections 376 and 506 IPC and Section 6 of POCSO Act.

3. Finding a *prima facie* case, appellant was charge-sheeted for the commission of offence punishable under Sections 376 and 506 IPC and Section 4 of POCSO Act.

4. To substantiate its case, prosecution has examined PW-1 Dr. Maan Singh, Medical Officer, General Hospital, Ballabgarh, PW-2 Lady Constable Suresh Bala, PW-3 EHC Udai Pal, PW-4 Yusuf Khan (complainant), PW-5 minor victim/prosecutrix, PW-6 Maya Devi (mother of prosecutrix), PW-7 Inspector Inder Singh, PW-8 Sarwan Kumar (Draftsman), PW-9 Constable Rinku, PW-10 Head Constable Pritam Singh, PW-11 Dr. Vandana Sharma, Medical Officer, B.K. Hospital, Faridabad and PW-12 Assistant Sub Inspector Dharamvir (Investigating Officer). FSL report dated 15.01.2013 (Ex.P/5) was tendered in evidence and thereafter prosecution evidence was closed by learned Public Prosecutor for the State.

5. After closure of prosecution evidence, statement of appellant as envisaged under Section 313 Cr.P.C. was recorded, wherein all the incriminating material/evidence were put to him, but he has denied all the allegations levelled against him. Appellant has stated that he is innocent and has been falsely implicated in the instant case.

6. No evidence in defence was led by the appellant.

7. On appreciation of evidence, learned Additional Sessions Judge convicted and sentenced the appellant, vide judgment of conviction and

order of sentence, in the manner, as detailed above.

8. We have heard learned counsel for the appellant as well as learned State counsel and critically examined the evidence available on the record.

9. Learned counsel for appellant *inter alia* contended that though alleged incidents of rape commenced in the winter season of 2011-2012, whereas complaint was moved on 30.10.2012 i.e. after about one year and as such there was inordinate delay in bringing the matter to the notice of police and this fact alone creates doubt in the veracity of prosecution version. Age of prosecutrix has been shown to be 13-14 years at the relevant time, whereas no cogent evidence has been led on the record to prove her date of birth. Admittedly, appellant alongwith family members (total eight in number) was staying in one room accommodation, in this scenario, it was quite improbable that he used to commit rape upon his daughter and that too for the last one year. Even otherwise, medical evidence does not support the cause of prosecution on account of absence of injury marks on the person of prosecutrix and absence of semen on her vaginal swabs shows that she was never subjected to sexual assault. Testimony of PW-4 Yusuf Khan (complainant) was based on hearsay as Anil son of Lekh Raj, who had allegedly informed him (complainant) about alleged incidents, was not even cited as prosecution witness. PW-6 Maya Devi being mother of prosecutrix was interested in the cause of prosecutrix. In a given scenario, solitary testimony of prosecutrix without having corroboration from any other source does not inspire confidence. Since prosecution version is discrepant on material particulars and the fact that it is full of infirmities, thus, prosecution has utterly failed to prove its case beyond reasonable doubt and

consequently judgment of conviction and order on quantum of sentence are liable to be set aside and resultantly appellant is entitled to be acquitted of charges levelled against him.

10. On the other hand, learned State counsel has vehemently argued that prosecution has proved its case against the appellant by leading cogent and convincing evidence. PW-5 prosecutrix when stepped into the witness-box has categorically narrated the prosecution version and further PW-6 Maya Devi (mother of prosecutrix) has also come to her rescue. PW-4 Yusuf Khan (complainant), employer of appellant, when came to know about misdeeds of his employee, had come to the rescue of minor prosecutrix. PW-11 Dr. Vandana Sharma, who conducted medico-legal examination on the person of victim/prosecutrix, has categorically deposed that in her opinion the possibility of sexual intercourse cannot be ruled out. There is nothing to suggest that appellant is not capable of doing sexual activities, as is evident from his Medico-Legal Report (Ex.P/1). Prosecutrix was studying in 4th standard and she was barely 13-14 years at the relevant time. Though PW-6 Maya Devi, mother of prosecutrix, had come to know about misdeeds of her husband (appellant) 2-3 months prior to the registration of FIR, but on account of threat extended by appellant, she could not dare to bring the matter to the notice of police at the earliest. Statement of the prosecutrix cannot be disbelieved merely on the basis of minor discrepancies because of her young age and the prosecutrix had unequivocally accused the appellant i.e. her father of raping her for a period of close to ten months beginning prior to 30.10.2012. Learned State counsel urged that it is very unfortunate and painful that a father, who is protector of

his children, has been sexually assaulting his minor daughter for several months and keeping in view nature of offence committed by the appellant, he has been rightly convicted and sentenced by the Trial Court and, thus, instant appeal being devoid of merits be dismissed.

11. Before proceeding further, it is relevant to point out here that FIR was registered on 30.10.2012 detailing therein that sexual assault of prosecutrix was not a single isolated incidence but the abuse took place over a period of time. In this scenario, as the alleged incidents took place prior to 30.10.2012, prevalent provisions of Section 375 IPC is to be read which defines rape as follows:-

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

First.-- Against her will.

Secondly.-- Without her consent.

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

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

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

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

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

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

12. With regard to age of prosecutrix, it is observed that immediately on registration of FIR, prosecutrix was medico-legally examined on 30.10.2012 and she had disclosed her age 13 years, as is evident from her Medico-Legal Report (Ex.P/9). Prosecutrix when appeared in the witness-box as PW-5 has categorically stated that she has studied upto 4th standard and at the relevant time she was student of 4th standard in Government Primary School, Jasana. She also stated that she is having brothers and sisters and they are six in number. PW-6 Maya Devi, mother of prosecutrix, stated that she has been blessed with six children (three daughters and three sons) and the prosecutrix is eldest of them and aged about 13-14 years. She further stated that prosecutrix was studying in 4th standard in Government Primary School, Jasana, at the time of incidents. It is pertinent to mention here that Maya Devi (PW-6) had disclosed her age 36 years when she stepped into the witness-box. Appellant-Ran Bahadur after his arrest on 31.10.2012 was medico-legally examined on the same day and at the time of his medico-legal examination, he had disclosed his age 37 years, as is evident from Medico-Legal Report (Ex.P/1). Further, at the time of recording of statement of appellant as envisaged under Section 313 Cr.P.C., he had disclosed his age 37 years though the same was recorded on 07.05.2013. It will not be out of place to mention here that though during the course of investigation, a certificate dated 05.12.2012 was obtained from Headmaster, Government Primary School, Jasana, District Faridabad (Haryana), which forms part of final report under Section 173 Cr.P.C. (*Challan*) and is enclosed with the Trial Court Record but it appears that no

effort was made at the instance of Prosecuting Agency to cite the concerned witness to prove above said School Certificate. In the above said School Certificate, the date of birth of prosecutrix as per school record at the time of her admission in the school has been recorded as 02.09.2002 and further it is mentioned therein that she was student of 4th standard at the relevant time. In this view of the matter, though Prosecuting Agency was not fair in its approach at the time of trial but a fact cannot be lost the sight that at the relevant time prosecutrix was student of 4th standard. Once it has come on the record that age of parents of prosecutrix was ranging between 36-37 years at the relevant time and they have been blessed with six children and the prosecutrix being eldest of them, one can easily presume that appellant (father of prosecutrix) might have been married at the age of 21 years and the prosecutrix being his first child might have taken birth when he was aged about 22-23 years. Since appellant was aged about 36-37 years at the relevant time and especially in view of the fact that incidents of sexual assault of prosecutrix spanned over a period of time prior to 30.10.2012 coupled with entire scenario as discussed, it can be conveniently held that prosecutrix was aged 13-14 years at the relevant time.

13. Having considered the submissions made by learned counsel for the parties and after careful perusal of the record of the case, we are of the considered opinion that the prosecution evidence is cogent and reliable. PW-5 (prosecutrix) when stepped into the witness-box deposed that her father (appellant) had committed wrong act with her and he used to rape her since last winter season and when she disclosed the said incidents to her mother, latter was threatened at knife point by her father. Prosecutrix has

categorically stated that she was studying in 4th standard in Government Primary School, Jasana, and her father was working in a company which was quite near to their residential accommodation. Prosecutrix has specifically stated that she was medically examined. At this juncture, discussion in respect of testimony of PW-6 Maya Devi (mother of prosecutrix) is quite relevant. Maya Devi (PW-6), while corroborating the testimony of PW-5 prosecutrix has categorically testified that she has been blessed with six children and the prosecutrix being eldest of them is aged about 13-14 years. She alongwith her husband and children used to reside in a rented accommodation situate adjoining to the factory of Yusuf Khan (PW-4). PW-6 Maya Devi specifically stated that in her absence her husband (appellant) used to commit rape upon her minor daughter (prosecutrix) in their residential accommodation for the last 7-8 months and about 2-3 months back when she came back to home from duty, prosecutrix had disclosed that her father (appellant) used to rape her. She further testified that when her husband came back to home from duty, she asked him about the incidents, but she was threatened to kill at knife point by the appellant. PW-6 Maya Devi has categorically stated that at the time of incidents, her daughter (prosecutrix) was student of 4th standard in Government Primary School, Jasana. She further stated that on query by Yusuf Khan (complainant), she had disclosed the entire incidents to him and that too in the presence of her husband and thereafter she alongwith Yusuf Khan (complainant) had gone to Police Station Tigaon for lodging complaint and her statement was recorded by the police. She further stated that prosecutrix was medically examined. PW-4 Yusuf Khan (complainant)

while reiterating the version of complaint (Ex.P/6) has also come to the rescue of prosecutrix. At this juncture, it is relevant to point out here that PW-11 Dr. Vandana Sharma has categorically stated that on 30.10.2012, she had medico-legally examined prosecutrix aged 13 years and found Labia, Minora, Majora well developed, Hymen was found torn and ruptured with healed margins and in her opinion possibility of sexual intercourse cannot be ruled out. PW-1 Dr. Maan Singh, who conducted medico-legal examination of appellant stated that in his opinion there was nothing to suggest that person was unable to do intercourse. It is pertinent to mention here that though vaginal swabs of prosecutrix were sent to FSL for analysis, but semen could not be detected on those swabs. Testimony of minor prosecutrix is important piece of evidence against the appellant. None of the witnesses i.e. PW-4 Yusuf Khan (complainant), PW-5 prosecutrix and PW-6 Maya Devi (mother of prosecutrix), had any ill-will or enmity against the appellant. The period of sexual assault upon the prosecutrix spanned for almost one year. Though Anil son of Lekhraj has not been cited as prosecution witness by the Prosecuting Agency but in view of testimony of PW-6 Maya Devi (mother of prosecutrix) as on query by PW-4 Yusuf Khan (complainant), employer of appellant, she had given details of entire incidents of sexual assault on the person of prosecutrix by appellant to said Yusuf Khan and then latter accompanied by Maya Devi (PW-6) and PW-5 prosecutrix had gone to Police Station to lodge the complaint, in this scenario, version rendered by said Yusuf Khan cannot be said to be based on hearsay but on actual narration of facts by the mother of the prosecutrix. Thus, exclusion of name of Anil son of Lekhraj as prosecution witness does

not make any difference.

14. It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement. The Courts should find no difficulty in acting 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. It is also well settled principle of law that 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. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

15. Hon'ble Supreme Court in case State of Punjab vs. Gurmit Singh (supra), made the following observations:-

“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 over-look. 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 levelled 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 at 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 self inflicted, 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 over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons'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.”

16. Hon’ble Supreme Court in case **State of Himachal Pradesh** vs.

Manga Singh, 2018(15) SCALE 895 observed as under:-

“(11). The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

(12) It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the ‘probabilities factor’ does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

17. In the instant case, minor prosecutrix was sexually assaulted over a period of time and that too by her father and she could not reveal sufferings meted out to her solely for the reason she was of tender age. The period of sexual assault upon the prosecutrix spanned for almost one year and though she made herself courageous to reveal the misdeeds of her father to her mother (PW-6 Maya Devi), but in turn appellant while confronted by his wife had also threatened to kill her (PW-6 Maya Devi) and that too at knife point. Thus, from the evidence available on the record, it is clearly established that there is no rhyme or reason as to why the victim/prosecutrix

should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is none other than her husband and father of the girl, at the risk of bringing down their social status and spoiling their reputation in the society as well as family circle to which they belong to.

18. Rape is such a dark reality of the Indian Society that devastates a women's soul, shatters her self-respect and for a few, purges their hope to live. It shakes the insight of a woman who once was a 'happy person' and had no clue of being a victim of the said horrifying and terrifying encounter where the daughter had been raped by none else but her own father. At this stage, we have no hesitation to say the offences against the woman more particularly sexual assault are increasing and it is necessary for the Courts to imbibe the legislative wisdom and to respect it because rape or an attempt to rape is a crime not against an individual but a crime, which destroys the basic equilibrium of the social atmosphere, as it not only lowers the dignity of a woman but also mars her reputation. In this view of the matter, testimony of prosecutrix (PW-5) cannot be doubted in any manner and even

otherwise her mother (PW-6 Maya Devi) to whom she had narrated her woes has come to her rescue.

19. As regards the delay, it is observed that mere delay in filing first information report is no ground to doubt the case of the prosecutrix that the evidence given by her should not be accepted. 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 woman; it casts doubt and shame upon her rather than comfort and sympathize with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. In case State of Punjab vs. Gurmit Singh (supra), Hon'ble Supreme Court observed as under:-

"In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The Courts cannot overlook the fact that in sexual offences, delay in 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."

20. Hon'ble Supreme Court in case State of Himachal Pradesh vs. Gian Chand, (2001)6 SCC 71 while dealing with above said aspect has categorically observed as under:-

"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and

discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. [...] However, if the delay is explained to the satisfaction of the court, the delay cannot itself be a ground for disbelieving and discarding the entire prosecution case.”

21. There may be a variety of reasons why a survivor or victim of sexual violence may not immediately report the incident to the police. The offender could be an employer, neighbour, family member, or friend creating several complications in immediately reporting an instance of sexual violence. Even independent of such complications, sexual assault is traumatic and every woman may react differently to being sexually assaulted. Some women may require some time before they file an FIR or make a complaint. Women may also be hesitant to share the fact that they have been assaulted with their families. If and when they do share it with their families, their families may dissuade them from filing a complaint because they are concerned about the “honour” of their family or the survivor or victim’s marriage prospects. Such considerations should be taken seriously by Courts considering the facts of the case and the social realities facing women, and delay in reporting should not mechanically be relied on to dismiss allegations of sexual violence against women.

22. In the instant case, as prosecutrix was subjected to sexual molestation by her father during her tender age and when she disclosed about the incidents to her mother (PW-6 Maya Devi), who in turn when raised this issue with her husband (appellant), but she was threatened to kill at knife point by appellant and when Yusuf Khan (PW-4), employer of

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appellant, came to their rescue, they immediately reported the matter to the police. In this scenario, delay if any, in reporting the matter to the police, has paled into insignificance.

23. With respect to the challenge to the medical evidence on account of absence of injury marks on the person of prosecutrix as well as absence of semen on her vaginal swabs, it is observed that PW-11 Dr. Vandana Sharma, who conducted medico-legal examination of prosecutrix, has categorically deposed that on 30.10.2012, she had medico-legally examined prosecutrix aged 13 years and found Labia, Minora, Majora well developed, Hymen was found torn and ruptured with healed margins and in her opinion possibility of sexual intercourse cannot be ruled out.

24. In Parikh's Text Book of Medical Jurisprudence and Toxicology, it has been observed as under:-

"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."

25. In Gaur's The Penal Law of India, 6th Edn. 1955(Vol.II), Page 1678, it is observed as under :

"Even valuvul penetration has been held to be sufficient for a conviction of rape."

26. In Modi's Text Book of Medical Jurisprudence and Toxicology (21st Edn. Page 369), it has been observed that:

"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 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."

27. In Taylor's Principles and Practice of Medical Jurisprudence at page 69, rape is defined as under :

"As unlawful sexual intercourse by a man with a female other than his wife, without her consent. The merest penetration of the penis between the labia associated with the lack of consent is sufficient to constitute the offence."

28. In case Aman Kumar vs. State of Haryana, 2004 (1) RCR (Criminal) 925 (SC), Hon'ble Supreme Court had an occasion to consider the question as to in what circumstances the penetration would constitute the offence of rape and observed as under:-

“x x x x

To constitute the offence of rape it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under section 376 IPC."

29. Hon'ble Supreme Court in case Ranjit Hazarika Vs. State of Assam, (1998) 8 SCC 635, has held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony and further held that the opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.

30. In the case of State of Uttar Pradesh vs. Chhotey Lal, (2011)2 SCC 550, the Hon'ble Supreme Court observed that the survivor/victim had been gagged and threatened with a firearm and further observed as under:-

“32. Although the lady doctor, PW 5 did not find any injury on the external or internal part of the body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long a period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.”

31. In the case of O.M. Baby (dead) by legal representative vs. State of Kerala, (2012)11 Supreme Court Cases 362, the Hon'ble Supreme Court has held that in any event, absence of injuries or mark of violence on the person of the prosecutrix may not be decisive, particularly, in a situation where the victim did not offer any resistance on account of threat or fear meted out to her.

32. In view of the facts and circumstances of the case and the evidence available on record as medical evidence also points out that on

ruptured with healed margins and in the opinion of doctor possibility of sexual intercourse cannot be ruled out, there is no reason of false implication of appellant in this case as medical evidence is in consonance with the ocular version of prosecutrix. Thus, we reach to a safe conclusion that it was appellant, who committed rape upon prosecutrix and he had been committing such wrongful act upon his minor daughter aged 13-14 years.

33. With regard to improbable version on account of one room accommodation of appellant and his family members, it is observed that PW-6 Maya Devi (mother of prosecutrix) has categorically stated that in her absence appellant committed rape upon prosecutrix for the last 7-8 months and about 2-3 months back when she returned to home after observing her duty, prosecutrix had narrated her sufferings to her and when she raised the issue with her husband (appellant), she was threatened to kill at knife point. In a given scenario, it transpires that while taking advantage of absence of PW-6 Maya Devi (mother of prosecutrix) from home on account of her duty, the fact that workplace of appellant was quite near to his residential accommodation and further the fact that prosecutrix was of tender age, appellant took advantage of all these aspects to sexually assault his minor daughter at his convenience and that too in one room accommodation. In this view of the matter, though appellant alongwith his family members was residing in one room accommodation, that circumstance alone cannot make the prosecution version improbable by any stretch of imagination. Therefore, evidence produced by the prosecution is very much consistent, cogent and worth reliance.

34. At this juncture, it is relevant to point out here that FIR was registered for offence under Sections 376 and 506 IPC, however, on

completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented under Sections 376 and 506 IPC and Section 6 of POCSO Act, on 08.12.2012 in the Court. POCSO Act was brought into force w.e.f. 14.11.2012, vide Notification No.S.O.2705(E), dated 09.11.2012. FIR was registered on 30.10.2012 and offence in question took place prior thereto. On presentation of *Challan*, appellant was charge-sheeted to face trial for the commission of offence punishable under Sections 376 and 506 IPC and Section 4 of POCSO Act. Therefore, we are of the view that appellant could not have been prosecuted for the offence under Section 4 of POCSO Act as offence in question took place prior to enforcement of said Act. Thus, prosecution of appellant for the commission of offence under Section 4 of POCSO Act was unwarranted. Prosecution has successfully established the charges against appellant-Ran Bahadur for the commission of offence punishable under Sections 376 and 506 IPC and resultantly conviction of appellant under Sections 376 and 506 IPC is upheld. However, he is acquitted of charge under Section 4 of POCSO Act.

35. With regard to the order on quantum of sentence, it is observed that the sexual abuse of the children is alarming and there is no respite although the legislature has provided stringent punishments for the sexual offences. As the alleged incidents took place prior to 30.10.2012, prevalent provisions of Section 376 IPC is to be read which defines punishment for rape as follows:-

“376. Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for

life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.”

(2) x x x x

36. Before arriving at an appropriate conclusion regarding the punishment to be inflicted on the appellant, it is necessary to refer to certain principles laid down by Hon'ble Supreme Court in the matter of awarding sentence in such a case. In case **State of Himachal Pradesh vs. Asha Ram, 2006(1) R.C.R. (Criminal) 139**, it has been held as under:-

“20. x x x x Here is the case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter [.....]

21. Having said so, regarding sentence we are tempted to

quote the observation of Justice Pandian in the case of Madan Gopal Kakkad (supra) where it has been observed that "Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand."

37. It is a settled law that the sentence imposed on an accused person should be appropriate and proportionate with the crime that he/she has committed. Hon'ble Supreme Court in Hazara Singh vs. Raj Kumar and others, (2013)9 SCC 516 while elucidating upon the concept of sentencing in India has held as under:-

"11. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

38. In our view, the appellant has taken undue advantage of the loneliness and haplessness of the minor victim and prosecutrix fell prey to his bestiality. Perpetrators of sexual offences on innocent children are psycho-social deviants, who cannot lay any claim to leniency. It is in the order of nature, and is the sacred right of every living being to blossom from infancy, to childhood, to adolescence and, finally, to adulthood. This order of nature is thrown into violent disarray by the sexual predators of children. The innocence of the prosecutrix in the present case, who had barely savoured the first fragrance of childhood, let alone adolescence, was brutally plundered by the appellant, the deviancy of his act being augmented by the fact that he chose to sodomise her. The trauma that the prosecutrix is bound to suffer, on account of the appellant, is bound to be lifelong.

Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. We find that although the minimum punishment stipulated for offence punishable under Section 376(1) IPC is seven years but the same may extend upto life in addition to fine but in view of the facts and circumstances of the case and the abominable nature of the offence, we find that nothing short of the maximum sentence would meet the ends of justice. In view of the above discussion, there is no scope to interfere in the sentence awarded by the Trial Court and as such, order of sentence for the commission of offence punishable under Sections 376 and 506 IPC is upheld. Thus, as a sequel to above discussion and findings, instant appeal, subject to above modification in respect of acquittal of appellant for the commission of offence punishable under Section 4 of POCSO Act, being devoid of any merit, is dismissed.

39. However, while dismissing the appeal, we are of the considered view that the prosecutrix has suffered not only physically but also mentally and, therefore, needs to be compensated at least monetarily. Section 357A Cr.P.C. provides for a Victim Compensation Scheme and the said provision was inserted by Act 5 of 2009 w.e.f. 31.12.2009. The same is reproduced as under:-

“[1] Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the

crime and who, require rehabilitation.

[2] Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

[3] If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

[4] Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

[5] On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

[6] The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer Incharge of the Police Station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

40. Pursuant thereto, the Government of Haryana came up with Notification dated 03.04.2013, called as Haryana Victim Compensation Scheme, 2013 (hereinafter referred to as “Scheme, 2013”). Clause 2(g) of the said Scheme defines the term “victim” as defined under the Act. As per Section 2(wa) Cr.P.C., “victim” means a person who has suffered any loss

or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

41. The Scheme, 2013, also provides for constitution of a fund namely Victim Compensation Fund and the funds under the same have to be operated by the Member Secretary, State Legal Services Authority. Clause 4 provides for eligibility for the grant of compensation where a recommendation is made by the Court under sub-Section (2) and (3) of Section 357A Cr.P.C. while Clause 5 of the Scheme provides the procedure for grant of compensation and lays down that whenever a recommendation is made by the Court under sub-Section(2) of Section 357A Cr.P.C. or an application is moved by any victim or his dependent under sub-Section (4) of Section 357A Cr.P.C., to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim for grant of compensation within two months, in accordance with the provisions of the Scheme. It further provides that the compensation payable under this Scheme shall be in addition to the payment of fine to the victim under Section 326A or Section 376D IPC. Clause 5(3) further provides that the District Legal Services Authority shall decide the quantum of compensation to be paid to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. with the quantum of compensation to be awarded to the victim as per the Schedule I. As per Schedule I, compensation of Rs.3 Lakhs is provided for rape victim and in

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case the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above. Section 357A Cr.P.C. is in force w.e.f. 31.12.2009. Scheme, 2013, came into force on 03.04.2013 well prior to passing of judgment of conviction dated 09.05.2013 and order on quantum of sentence dated 14.05.2013. Instant case is covered by Clause 8 of Scheme, 2013 as proviso to said clause provides for benefit to the cases occurred on or after 01.01.2012. No compensation was awarded by the Trial Court also under Section 357 Cr.P.C. By the time, the appeal came up for hearing before us, the Scheme, 2013, was repealed by the Haryana Victim Compensation Scheme, 2020 (hereinafter referred to as “Scheme, 2020”). Clause 10 of Scheme, 2020, provides that any order made or action taken under the scheme so repealed shall be deemed to have been taken, made or taken under the corresponding provision of Scheme, 2020. Notwithstanding repeal of the Scheme, 2013, but due to failure of the Trial Court to award compensation in terms of Section 357A Cr.P.C. and Scheme, 2013, we award compensation of Rs.4,50,000/- (as victim was aged less than 14 years) in terms of the Scheme, 2013 as prevailing on 09.05.2013 and direct the District Legal Services Authority, Faridabad, to release the aforesaid amount to the victim/prosecutrix within three months positively.

(B.S. Walia)
Judge

(Lalit Batra)
Judge

10.08.2023
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No