
(2001) 05 DEL CK 0016

In the Delhi High Court

Case No : Criminal Appeal No. 220 of 1996

Abdul Hamid

APPELLANT

Vs

State (Delhi Admn.)

RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2001) 59 DRJ 777

Hon'ble Judges : Usha Mehra, J;Mahmood Ali Khan, J

Bench : Division Bench

Advocate : Mr. Abraham M.A., amices Curaie, for the Appellant; Mr. Ravinder Chadha, for the Respondent

Judgement

Mahmood Ali Khan, J.—An eight year old girl was ravished by her own step father, the appellant herein. The Addl. Sessions Judge has convicted him u/s 376 IPC for committing offence of rape and has sentenced him to under go imprisonment for life and pay a fine of Rs.1000/-, in default whereof, to further under go simple imprisonment of three months. The appellant is aggrieved and has come up in appeal.

2. The verdict has been challenged by the appellant mainly on the ground that there was inordinate delay in the lodging of the FIR in respect of the occurrence; the statement of the prosecutrix, the ravished child, is not corroborated by independent witness; PW1 & PW2 are mother and grand-mother of the victim and are interested witnesses; the doctors who has examined the prosecutrix have not been examined and their report has been proved by calling the Clark from the hospital thus depriving the appellant of an opportunity of clarification in the medical reports; no injury was found on the penis of the appellant on medical examination which ought to have been there had he raped the girl child of the tender age of eight years; there is no injury on the body of the appellant although the prosecutrix in her deposition had stated that she had used her nails

and hands to push him away; in the MLC the doctor has merely recorded alleged act of sexual assault and has not mentioned the name of the appellant as the person who committed this sexual act; the prosecution is the handiwork of Ramesh @Salim with whom the mother of the prosecutrix and the prosecutrix are living after the occurrence and who is being prosecuted for an attempt of a murderous assault on the appellant; and that prosecution case is false and the appellant has been falsely implicated in it.

3. Before embarking upon to decide the contentions of the appellant, it is necessary to know the relevant facts of the case. The facts of case, as revealed by the FIR and the evidence led by the prosecution, are that on receipt of D.D.No.17/A at 12.50 AM on 3.1.1994 at the police station, Seelam Pur that a girl has been raped in Jhuggi No.756, Taj Colony, ASI Mahavir Singh along with his staff reached that place. The ravished girl Babli and their mother Ms. Salma were taken to G.T.B. Hospital where medical examination of Babli was done and the doctor gave his opinion indicative of sexual assault. Thereupon the statement of Ms. Salam was recorded which is Ex. PW1/A and after making endorsement Ex.PW8/A thereon the writing was sent to the police station Seelam Pur at about 3.30 AM where FIR No.3/94 u/s 376 IPC was registered. Its copy is Ex.PW4/B. The MLC is Ex.PW10/A.

4. In her statement made to the IO Ms. Salma stated that she along with her children was living in Jhuggi No.756 and was earning her livelihood by doing odd jobs as a domestic help and as a labourer. She had married with one Ramesh of Sunder Nagari and had given birth to four children. The eldest child is a daughter named Babli who is eight years old. About three years back she broke her alliance with Ramesh and married Abdul Hamid (appellant herein). Since then she alone with her children was living with Abdul Hamid and had given birth to a male child from him who is now two years old. On 2.1.1994 at about 10.00 AM she had gone to attend her work in Taj Colony leaving her children with Abdul Hamid, appellant. She came back at about 6.00 PM and saw her daughter Babli crying. Her own mother Ms. Razia also lived in the adjoining Jhuggi. She also came back from her work. Babli then told both of them weeping that Abdul Hamid had committed sexual act with her and that Abdul Hamid made her lie down on the cot, untied her shalwar and he himself took off his own pants and underwear. She tried to make hue and cry but the appellant frightened her. The appellant first pressed her private part with his finger and thereafter he entered his penis into her vagina. She felt pain and cried. Appellant immediately took out his penis and gagged her mouth. Ms. Salma further stated that she saw the shalwar of Babli having blood stains and that there was bleeding from her private part. She and her mother Ms. Razia challenged Abdul Hamid. He fell on their feet and beseeched them for hushing up the matter. She and her mother started deliberating upon it. The condition of Babli deteriorated. She then told about the occurrence to her neighbours. Abdul Hamid finding an opportunity escaped. Somebody informed the police station on telephone. The police arrived and took her and her daughter Babli to the hospital. Babli was medically examined. Abdul

Hamid had committed rape upon her daughter and had ruined her life.

5. During the investigation the IO ASI Mahavir Singh, PW-8 had taken into possession the shalwar and frock of the prosecutrix in the hospital. He put them in a sealed parcel before taking into possession vide memo Ex.PW1/B. He identified the shalwar Ex.P-1 and frock Ex.P-2. From the hospital, he came back to the Jhuggi No.756 Taj Colony. He received a copy of the FIR and the original writing from the police station through a constable. He also took into possession the bedsheet and blood stained cloth piece vide memo Ex.PW1/C and identified them as Ex.P3 and P4. He also prepared the site plain Ex.PW8/A. The underwear of the appellant was also taken into possession vide memo Ex.PW5/A. It was put in a sealed parcel. He identified the underwear as Ex.P5/A. The case property was deposited by him in the malkhana.

6. Ms. Salma then got the appellant Abdul Hamid arrested. Medical examination of Abdul Hamid was also conducted at the hospital which is Ex.PW6/A. He was 22 years old and his secondary sexual character were well developed. There was no physical deformity. According to the doctor he was physically capable of committing sexual intercourse. No injury was found on his body.

7. The IO sent the case property to the CFSL and obtained its report Ex.PW8/E. After completion of the investigation he submitted challan to the court. The learned Magistrate sent the case to the court of Sessions where charge u/s 376 was framed against the appellant. The appellant pleaded not guilty to the charge and claimed to be tried. The prosecution examined in all eight witnesses. Statement of the appellant was recorded u/s 313 Cr .P.C. There was plain denial of the prosecution evidence and circumstances put to the appellant during his statement. He further stated that Ms. Salma, wife of Ramesh came to him as he was well off and that she got him stabbed and the criminal case is pending regarding that assault. He had married Ms. Nagina and Ms. Salma wanted him to leave her. When he refused to give up Ms. Nagina, he was falsely implicated in the instant case. The appellant did not lead any evidence in defense.

8. The learned counsel appearing for the appellant has submitted that though apparently the nature of the crime appears to be heinous yet in the circumstances of the case the appellant cannot be convicted of the offence charged with and be sentenced as according to him the prosecution has miserably failed to produce any cogent and reliable evidence against him. One of the submissions of the learned counsel for the appellant is that the prosecution has failed to explain the delay in the lodging of the FIR. We do not find any force in this submission. According to the prosecution case the occurrence has taken place in the afternoon at about 4.00/5.00 PM. The prosecutrix, victim of the sexual act of the appellant, is only eight years old and eldest among the five children of Ms. Salma. She was alone in the jhuggi after the offence was committed. Around 6.00 PM her mother Ms. Salma PW-1 and her grand-mother Ms. Razia Begum PW-2 came back after their day's work when they found the prosecutrix crying and bleeding from her private part. She was with her

neighbour Ms. Shah jahan. It is in the deposition of Ms. Salma PW-1 and Ms. Razia Begum PW-2 that the appellant fell to their feet and requested them to hush up the matter and there was deliberation over his request. It is also the statement of Ms. Salma PW-1 that somebody informed the police and then the police came around mid-night and took them to the hospital.

9. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led in the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapon, if any, used, as also the names of the eyewitnesses, if any. Delay in filing of the FIR is vital and brings infirmity and embellishment as it gives time for deliberation and consultation and possibility of fabrication. However, mere delay in recording of the FIR is not a ground by itself for disbelieving the veracity of the prosecution version of the occurrence if adequate and sufficient Explanation is forthcoming in the prosecution evidence.

10. In a case of rape of a married woman whose muklana/gauna ceremony had not been performed there was a delay of five days in lodging of the FIR. The Explanation given was that the parents would be chary of such incident gaining publicity because the in-laws of the prosecutrix having become aware of the incident could even refused to accept her. Further while the parents were about to lodge a report about the occurrence at the police station they were prevented from doing so by the members of the community to which the accused belonged and tried to pursue them not to lodge the report with the police and have the matter settled by convening panchayat of the village people. The Hon''ble Supreme Court in State of Rajasthan Vs. N.K.-The Accused, on noticing these facts made the following observations:-

"We may however state that a mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an Explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution. In State of Rajasthan Vs. Shri Narayan, this Court observed - "True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police"In State of Punjab Vs. Gurmit Singh and Others, this Court had held - "The Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix on 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." So are the observations made by this Court in the

observations made by this Court in Karnel Singh Vs. State of M.P., repelling the defense contention based on delay in lodging the FIR. In the present case, in our opinion the delay in lodging the FIR has been satisfactorily explained."

11. In the instant case the appellant was not a stranger to the prosecutrix and the family. He was the man with whom the mother of the prosecutrix Ms. Salma had married after leaving her previous husband Ramesh. Even if they were not legally married as claimed by learned defense counsel they were having stable cohabitation as husband and wife. Ms. Salma had given birth to a son from the appellant who is two years old. They were living together along with five children of Ms. Salma including the prosecutrix Babli for the past three years as a family. For all practical purposes he was the step father of the prosecutrix. The act of the appellant was grave and serious and had far reaching consequences for the prosecutrix as well as the family. Therefore, initial hesitation of the mother of the appellant to rush to the police for getting the case registered is not unreasonable. Seven or eight hours delay, as such, to our considered view, has satisfactorily been explained by the prosecution.

12. As stated above, the prosecution has examined 10 witnesses in all, of them the material witnesses are the prosecutrix Babli PW-3, her mother Ms. Salma PW-1 and her grandmother Razia Begum PW-2. There is no eye witness to the rape committed by the appellant on the prosecutrix and in most of the cases ocular evidence is neither possible nor expected. Molestation, sexual harassment and rape are the offences in which the perpetrator takes utmost precaution in not being seen by anyone while committing the act. There may be exceptions here or there but they are few. It is now well settled that the statement of the prosecutrix if it has a ring of truth around it is sufficient to prove the charge of rape against the offender. No corroboration is needed in most of the cases. The Apex Court in State of Maharashtra Vs. Chandraprakash Kewalchand Jain, made the following observation:-

"We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behavior. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing.... Courts must also realise that ordinarily a woman, more so a young girl, will not

stake her reputation by levelling a false charge concerning her chastity."

13. A similar view was taken by the Supreme Court in Karnel Singh Vs. State of M.P., . In the case in hand the prosecutrix was only eight years old when the sexual act was committed by the appellant with her. She was 10 years old when her statement was recorded in the court. We have read her statement and we agree with the learned Addl. Sessions Judge that the prosecutrix was intelligent enough to understand the questions and give answers. In fact the tenor of her statement made to the court satisfy us that she was a sensible and an intelligent child who had not only corroborated the prosecution case in toto but has also withstood the on-slaught of cross-examination of a seasoned lawyer well. The defense could not make any dent into her testimony. It seems reliable. But it has to be remembered that prosecutrix is a child after all and that the children are prone to tutoring. Therefore the statement of a child witness should always be read with great care and caution and wherever necessary a corroboration from the testimony of other witnesses and medical evidence should be sought. When the child witness had given the evidence against her very near relative and that too in the context of heinous crime the court has to examine evidence of such child witnesses with utmost caution. In cases of such evidence the court has to search for reliable corroborative evidence either oral or documentary evidence as a matter of prudence after getting satisfied with the evidence of such child witness is itself free from infirmity and embellishment.

14. Let us now examine the statement of the prosecutrix PW-3 Babli. Her statement is that she was studying in Vth class and was living with her mother in a jhuggi in Taj Colony. Her father was Ramesh but she was not living with him at the time of this occurrence. The appellant was her second father. She did not know her mother had married him or not. She also did not know why her mother had left her natural father. Ms. Razia Begum was her maternal grandmother. Three years back in the first month on second day her grandmother had gone to collect the cloth pieces. She along with her brothers and sisters and the appellant was there in the jhuggi. Her grandmother came back at 6.00 PM. The door of the jhuggi was open but at about 4.00/5.00 PM the appellant closed the door. She alone was in the jhuggi and was sitting on the bed. The appellant made her lie on the bed forcibly. The bedsheet was on the bed. She herself was wearing a force and a shalwar. The appellant was wearing pants and a shirt. After making her lie on the bed the appellant took off his pants. He also united her shalwar and removed. it. He first inserted his finger into her vagina. Thereafter be penetrated his penis into her vagina and committed rape upon her. She tried to raised alarm. Thereupon the appellant gagged her mouth by a piece of cloth. When the appellant committed rape she had started bleeding from her vagina. Blood fell on her shalwar. She had felt pain when sexual act was committed. She started crying. Her mother and grandmother reached at about 6.00 PM. She narrated the whole incident to them. She identified the shalwar and frock as Ex.P1 & P2. She was taken to the police station where she was inquired about the incident. She was taken to the hospital and her medical examination was conducted there.

After committing this sexual act on her the appellant had run away. She identified the appellant as the person present in the court who was the culprit.

15. In the lengthy cross examination to which she was subjected, Babli stated that after this occurrence her mother along with her and her brothers and sisters had started living with Ramesh. She denied having made the statement to the police that her mother had broken her relationship with Ramesh and had married the appellant. When her mother and grandmother came back she was sitting in the jhuggi of their neighbour Mr.Shajahan. She did not tell about this occurrence to anyone except her mother when she in her own jhuggi. The appellant Abdul Hamid was not present in the jhuggi when Ms. Salma came back and she did not know about the place where he had gone. He had run away. The police had recorded her statement at the place of occurrence. Statement of her mother and grandmother were also recorded there. She did not remember whether any other statement was recorded by the police afterwards. Nobody was present inside the jhuggi when the appellant committed rape on her. She did not know as to where her four brothers, and sisters had gone at the time of occurrence. All of them were younger to her. She did not tell the police that they were sent out by the appellant. She had tried to raise alarm when the appellant inserted his finger into her vagina but the appellant gagged her mouth with a piece of cloth. She had also resisted the assault with her hands. She also used her nails to push the appellant away. But she did not see any injury or blood when she used her nails to throw him away. She did not bite him with her teeth. She did not notice any white liquid coming out of the penis of the appellant. The police had seized her clothes and bedsheet and had taken them to the police station. She was taken away to the hospital. She remained in the hospital for six or seven days with her mother. She denied that she was tutored by her mother to make the statement which she made to the police. She also denied that she had bleeding from her private part because of a fall on some object. She denied that the appellant had not committed sexual act with her forcibly.

16. The statement of the prosecutrix Babli PW-3 finds full corroboration from the medical evidence which was conducted at GTB Hospital on 3.1.1994 at 2.10 AM. MLC is Ex.PW-10/A and Ex.PW-10/B The alleged history record by the doctor is of sexual assault. On examination of the vagina the doctor had found a perinea injury of tear on 6 O'clock position, bleeding from perinea tear and hymen, the vagina was admitting one finger easily. There was two cm long mucus membrane tear at 5 O'clock position and at vaginal mucosa thee was a tear of 5 O'clock position extending perinea tear. The doctor has stitched the perinea tear.

17. The report was recorded by Dr. Rana Raja Ram, Sr. Gynaecologist and Dr. Arvind Meshram, ACOMO of the hospital. Unfortunately, both of their left the hospital leaving no trace of their present whereabouts as a consequence the prosecution called R.S.Sharma, Record Clerk of the GTB Hospital and examined as PW-10. He has proved the MLC Ex.PW10/A and Ex.PW10/B and identified the signatures of Dr. Rana Raja Ram. He has stated that the MLC was prepared by

Dr. Arvind Meshram and he has seen him writing and signing and has identified his signatures at point-A. He further stated that patient was referred to a senior gynaecologist and was examined by Dr. Rana Raja Ram who gave his opinion at point-B. He also identified writing and signatures of Dr. Rana Raja Ram Ex.PW10/B. In the cross examination he has categorically stated that both the doctors have left the hospital and their present addresses and whereabouts are not known and it is also not available in the administrative office of the hospital.

18. It is argued by the learned counsel appearing for the appellant that the doctors have not been examined and it has prejudiced his defense as he did not get an opportunity to elicit clarification and information on the report of the doctor and MLC Ex.PW10/A and 10/B. The examination of the doctor in such serious cases cannot be over-emphasised but if the doctor is not available as having left the hospital without leaving any address and present whereabouts the prosecution would certainly be handicapped and may get the writing and signatures and the addresses examined by a person who has known the doctors and has seen their writing and signatures and who can identify them. It is pertinent that none of the doctors who made reports about the condition of prosecutrix Babli and examined her private part had no enmity with the appellant. They were independent persons. The report of Dr. Rana Raja Ram, Sr. Gynaecologist has proved the injuries which the prosecutrix has on her private part. The nature of the injuries on the vagina/ private parts leads to a conclusion that it has been caused by the sexual act committed by the appellant as alleged by the prosecutrix.

19. A suggestion has been given to the prosecutrix that she had suffered injuries to her private part which had bleeding because of a fall on some object. However, we find that the statement of the prosecutrix PW-3 Babli inspires confidence and there is no reason why she would make false accusations against the appellant particularly of the commission of such a heinous crime. Her mother and siblings were living with the appellant for over three years in peace and harmony. There is no allegation that the appellant was cruel or ill-treated the prosecutrix or her mother or other brothers and sisters. In fact the mother of the prosecutrix had one male child from the appellant during this cohabitation with appellant.

20. Above all the testimony of Babli finds full corroboration from the statement of her mother PW1 Ms. Salma. She has stated that she had first married with Ramesh and had five Children from him but she broke the marriage and had a second marriage with the appellant. Her marriage was performed in Fatehpuri about four years back but she does not have the "nikah nama" in her possession. She denied that she had illicit relations with the appellant from before her marriage with Ramesh and denied that her husband Ramesh inflicted knife injury on the appellant because of her illicit relations with the appellant. She stated that this incident had taken place about three years back and the reason was that Ramesh had asked the appellant not to visit his house and come

to the locality or in the gali but the appellant did not desist. On the day of occurrence she came back after her work in the factory at about 5.00/6.00 PM. In the morning when she left for her work all her five children were in the jhuggi. Her daughter Babli was in the jhuggi of their neighbour Ms. Shahjahan. All her children were there. She denied that all her five children and the appellant were present in the jhuggi at that time. Her daughter Babli had started weeping when she returned. She was trembling, weeping and was frightened. Ms. Shahjahan told her about the incident. Nobody from the neighborhood jhuggis came. One Ms. Hamida also knew about the incident. She did not tell about this occurrence to anyone. She herself did not inform the police. But a PCR was stationed near her jhuggi and on hearing the commotion, the police came. The police had taken her and her daughter Babli to the hospital. Her mother had also gone there. They stayed in the hospital for three days. The clothes of Babli were taken into possession by the police after they came back from the hospital after three days. Her statement was recorded by the police. The statements of Babli and her own mother were also recorded by the police. She denied that she was deposing falsely because of enmity with the appellant. She also denied that she had falsely implicated the appellant because of the pendency of a case against her former husband because the appellant was injured and was a witness. The appellant was arrested at his pointing out. She denied that she was making false statement. From the statement of this witness it is evident that she along with her children including the prosecutrix Babli was living with the appellant for the past over three years. When she left jhuggi in the morning the appellant and her five children were in the jhuggi and when she came back the prosecutrix Babli was in the jhuggi of a neighbour Ms. Shahjahan and the prosecutrix told her about the occurrence and she was weeping and terrified and named the appellant as the one who had committed sexual act with her.

21. Though the appellant suggested in the cross-examination that he was involved in this case because of enmity but there is no suggestion on his part to show as to what was the reason for this enmity when Ms. Salma along with her children was living with him for the past three years after leaving the previous husband. The learned counsel for the appellant has submitted that she is now residing along with their children with Ramesh who is an accused in a case where he had stabbed the appellant with a knife. But the appellant does not say that Ms. Salma had any intention of leaving the appellant and going back to her previous husband Ramesh before this incident. Ramesh was natural father of the children and after the incident Ms. Salma along with the prosecutrix Ms. Babli and other children might have considered it safe to live with Ramesh. She has also stated in the cross-examination that there was fight between appellant and Ramesh when the appellant did not desist visiting to the house of Ramesh or visiting the locality despite warning. The appellant has not produced any documentary evidence to show he has been falsely implicated in the case. Ramesh is an accused in a case registered on his complaint. It is important to note that this case was registered when the appellant along with prosecutrix was

living with Ms. Salma. There is no allegation that Ramesh was visiting Ms. Salma and her children when the appellant was living with her. There is no evidence and even suggestion from the side of the appellant that Ms. Salma PW-1 and her children had decided to go back to Ramesh before this occurrence. Therefore, this case could not have been made at the behest of Ramesh. Ms. Salma also nurtured no animosity against appellant to have falsely implicated the appellant in such a heinous crime which concerns the honour and reputation of the prosecutrix and a stigma which haunts her throughout her life.

22. Mr. Razia Begum PW-2 is the maternal grandmother of the prosecutrix. Her statement has also corroborated the testimony of Ms. Salma PW-1 and the prosecutrix Babli PW-3. She has stated that on 2.1.1994 she along with her daughter Ms. Salma left their jhuggi in the morning for work and they came back about 5.00/6.00 PM and found babli weeping. She narrated the occurrence to them. She also told that the other children were sent out by the appellant she was kept back in the jhuggi and the appellant had closed the door from inside and that when she tried to cry he gagged her mouth with a piece of cloth and committed rape upon her. She started bleeding from her private part. She was wearing frock and shalwar. The witness saw blood stains on the shalwar, bedsheet and some blood on her frock. She also saw one underwear of the appellant with blood stains which was lying there. The appellant was present and he requested them not to take any action. When they were deliberating upon the appellant slipped away. Thereafter report was lodged with the police and her statement was also recorded. The police also got the medical examination of Babli conducted at the hospital. In the cross-examination she stated that Ms. Salma had married Ramesh about a year before the birth of Babli. A "nikah nama" was written when she married him. But the same is not available now. Ms. Salma left Ramesh since both of them used to quarrel. Thereafter Ms. Salma married Abdul Hamid. They were in love. "Nikah nama" was written in Fatehpuri. She had not brought it with her. It was also not given to the police as the same was not asked for. It is also no more available with them. Ms. Salma told her that she wanted to marry appellant Abdul Hamid. There was a quarrel between appellant Abdul Hamid and Ramesh after appellant's marriage with Ms. Salma. In that quarrel both the appellant and Ramesh had suffered injuries and were admitted in hospital. Salma had given blood to the appellant. On their return they had found Babli lying on the cot. A woman neighbour was also with her. She did not inform the police. Some neighbour might have done so. She and her daughter both had gone to lodge the complaint to the police after about 15 or 20 minutes of their arrival. Her statement and the statement of Ms. Salma was recorded by the police. The police had taken into possession the blood stained clothes of Babli in her presence. The police had taken into possession the underwear of the appellant, Shalwar, frock and one cloth of piece stained with blood. The statement of Ms. Babli was also recorded by the police in her presence. She denied that Ms. Salma and the appellant used to quarrel. She denied that before the marriage of Ms. Salma with the appellant Abdul Hamid,

Ramesh used to visit their jhuggi. She denied that Babli had suffered injuries on account of all on the ground or that Ms. Salma has falsely implicated the appellant because of some enmity between Ramesh and the appellant. The testimony of this witness as such on all material aspects had corroborated the statement of Ms. Salma PW-1 and the prosecutrix Babli PW-3. Both PW-1 Ms. Salma and PW-2 Ms. Razia Begum are close relative of the prosecutrix. But their testimony cannot be discarded being of interested witnesses, as the prosecutrix was girl child of 8 years and it was natural for her to have confined with them at least what had happened with her and the person concerned was her step father; there is no material contradiction/infirmity in their statements to make them unworthy of belief. A little discrepancy in the statement of Razia Begum PW-2, Ms. Salma PW-1 and even Babli PW-3 does not bring any infirmity in the statement of these witnesses. We do not have any good reason to discard them particularly when the statement of Babli finds full corroboration from the medical examination report Ex. PW10/A and PW10/B.

23. We have already noticed that Babli prosecutrix was only eight years old at the time of the commission of this offence. Even the IO ASI Mahavir Singh PW-8 has stated that from appearance she look eight years old. The doctor in MLC also noted her age as eight years. In fact the appellant has not disputed the age of the prosecutrix being eight years when the occurrence had taken place and 10 years when her statement was recorded as PW-3 in the court. She was thus well below the age of 16 years and the question of her consent need not vex our judicial mind in this case.

24. It is in the statements of the prosecutrix Babli PW-3, her mother Ms. Salma PW-1 and her grandmother Ms. Razia Begum PW-2 that Babli had bleeding from her private part and the bleeding had stained her shalwar, frock, bedsheet and there were stains on the piece of cloth by which her mouth was gagged by the appellant. All these articles were taken into possession by the police during the investigation. During medical examination also the doctor has taken a vaginal swab for examination. These articles were sent to the CFSL. Its report is Ex. PW/8E. It is admissible in evidence. These articles were sent for examination on detecting semen, the blood grouping, detection of blood and its origin. The examination could not confirm the presence of sperms specifically on bio-C, the glass slide and bio-A/1 frock, bio-A/2 shalwar, bio-B bedsheet and bio-D underwear. However, the serologist report showed that bio-A/1 frock, bio-A/2 shalwar, bio-B bedsheet had blood of AB group but the blood group of Ex. bio-D underwear and bio-E in a small glass viol could not be detected. This report, Therefore, as such at least corroborated the prosecution case that Babli PW-3 had bleeding from her vagina which had stained the bedsheet, her shalwar and frock etc. These articles were seized by the police soon after the occurrence during the investigation of the case. They are important corroborative piece of evidence in support of the statement of Babli PW-3.

25. It has been noted that medical examination of the appellant Abdul Hamid

was carried out after his arrest. The doctor found his secondary sexual characters well developed and did not find any deformity. The MLC of appellant are Ex. PW6/A and Ex. PW6/B. Then another Dr. P.C. Sahu is no more available in the hospital and these reports are proved by the Record Clerk of GTB Hospital Mr. R.S. Sharma PW-6. Then corrective is note challenged by the learned counsel for the appellant. The appellant was a youngman of 22 years. He was capable of committing sexual intercourse. In fact, there was evidence that Ms. Salma had given birth to a son from the appellant. The appellant as such could have committed sexual intercourse with the prosecutrix Ms. Babli.

26. The learned counsel for the appellant has strenuously argued that no semen and spermatozoa was detected on the underwear of the appellant which was seized by the police, the shalwar, frock and the bedsheet which were taken into possession by the IO from the place of occurrence or vaginal swab and this belies the allegation that appellant had committed sexual intercourse with Ms. Babli. The argument has no force and absence of semen etc. on shalwar, bedsheet, underwear etc. will not necessarily lead to an inference that the appellant had not committed sexual act. Ejaculation of semen is not necessary for the completion of the offence of rape. Mere penetration of the male organ into the vagina of a female constitute the offence of rape. It is the statement of Babli PW-3 that the appellant first inserted his finger into her vagina and thereafter penetrated his penis into her vagina. She cried. May be the appellant took out his penis before he reached the stage of ejaculation. Therefore, absence of spermatozoa and semen will not negate the prosecution case.

27. Testimony of other witnesses is formal in nature. IO Mahavir Singh PW-8 has fully supported the prosecution case and has narrated the sequence of investigation conducted by him. His cross-examination has not yielded anything to prove any infirmity in his statement. There is no reason to discard his evidence.

28. The learned counsel for the appellant has argued that the appellant, a grown up male is alleged to have committed rape on a minor girl of tender age of eight years and in the process he was bound to have suffered injuries on his male organ but his medical examination soon after his arrest has not revealed any such injury. According to him the absence of such injuries on his penis belies the allegations imputed against him. From the deposition of the prosecutrix it appears that the appellant had penetrated his male organ into the vagina of the prosecutrix but he had not performed the full sexual act because there had not been any ejaculation in the process. May be soon after penetration panicked by the cries of the hapless victim he withdrew. Even otherwise the appellant has not produced any medical evidence or drawn our attention to any medical jurisprudence that a male organ if penetrated into female organ of a minor of eight years is certain to have injuries on it even though the penetration is only once or partial. We, Therefore, dismiss the plea of the appellant.

29. The contention of the learned counsel for the appellant is that the prosecutrix

Babli has stated that she had tried to ward off the appellant from his on-slaught by using her hands and nails but the appellant did not have any scratch mark of nails or otherwise on his body during the medical examination conducted on him by the doctor. It is indeed true that the prosecutrix did make this statement but at the same time she has also stated that she had not seen any scratch mark of her hands or nails on the body of the appellant. The presence of nail marks and scratches on the body would depend upon the length of the nails and the force applied. A well trimmed nails will hardly leave any mark on the skin. After all the prosecutrix Babli was a small child of eight years old and what force she could have applied to scratch the body of the assailant may be imagined. What was the state of her nails and what was the force and the manner in which the nails were used is not on record. Even the prosecutrix herself did not notice any scratch mark of her nails. We find the ring of truth in the testimony of the prosecutrix which finds full corroboration from the medical evidence and deposition of her mother and grandmother etc. She did not have any motive of her own to falsely implicate the appellant. The argument, Therefore, is repelled.

30. Another argument of the learned counsel for the appellant is that the name of the appellant did not figure in the MLC Ex. PW10/A and the doctor has mentioned only a history of sexual assault without giving the name of the appellant as the assailant. The omission to name the appellant as the person who had committed the sexual assault in the MLC would not make the prosecution case incredible. It does not bring infirmity in the prosecution case as the mention or omission of the name of the perpetrator of crime in the alleged history of the case in which the injuries were suffered is not the only and circumstantial evidence led to lend credence to the prosecution case.

31. It is also argued by learned defense counsel that according the PW3 Babli the appellant had ran away after committing sexual act but PW2 Ms. Salma says he was there when she came back home at 6.00 PM and he had fallen on her feet begging to be or given and for hushing up the matter. The incident had taken place at 4.00 PM and the mother and grand-mother of prosecutrix came back at 6.00 PM. There is every possibility of the appellant hovering near the place of occurrence to plead to the mother and the grand-mother of the prosecutrix to hush up the matter. Therefore, we do not find such discrepancy in the statement of prosecutrix and her mother and grandmother that may make the prosecution case unworthy of credence.

32. Lastly, the learned counsel for the appellant argued that the appellant has been falsely implicated on account of his enmity with Ramesh with whom the mother of the prosecutrix and other children are living. We do not find substance in this submission. Ms. Salma PW-1 was married to Ramesh and had four children from him. It means she lived for a considerable long period with him. However, she left him and established alliance with the appellant and even had a male child from him who was two years old. According to the prosecution case and the statement of PW-1 Salma and PW-2 Ms. Razia Begum it is evident that

the appellant had been living with Ms. Salma and her children for over three years. Even the child which Ms. Salma had from the appellant was two years old. There is no allegation that the relationship between the appellant and Ms. Salma estranged or that Ms. Salma was still continuing her relationship with Ramesh. There had been a quarrel between Ramesh and the appellant may be because of the appellant's having snatched away Ms. Salma PW-1 from him. But it is the statement of PW-1 and PW-2 Ms. Salma and Ms. Razia Begum that in quarrel both appellant and Ramesh had sustained injuries and that Ms. Salma had given blood to the appellant. It means Ms. Salma was more inclined towards the appellant and has sided the appellant in that quarrel. There is no evidence that Ms. Salma and her children had decided to live with Ramesh before this occurrence had taken place. They started living with Ramesh only after this occurrence, reasons for it are obvious. We, Therefore, do not find that the appellant would have been falsely implicated in this case for any reason that there was animosity between Ramesh and the appellant.

33. Having regard to the above discussions, we find no infirmity in the judgment of the learned Addl. Sessions Judge. The appeal fails. It is dismissed with no order as to costs. Appellant be informed through Superintendent, Central Jail, Tihar forthwith.