
(2016) 03 AHC CK 0118
In the Allahabad High Court
Case No : Criminal Appeal No. 6473 of 2011

Akbar	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, Section 313
Penal Code, 1860 (IPC) — Section 376, Section 376 (1), Section 406, Section 417,
Section 494, Section 506

Citation : (2016) 93 ACrC 838 : (2016) 4 ADJ 18

Hon'ble Judges : B.K. Narayana and V.P. Pathak, JJ.

Bench : Division Bench

Advocate : Veer Singh, Dinesh Kumar Tyagi, Irshad Husain and Lav Srivastava,
for the Appellant;

Final Decision : Partly Allowed

Judgement

1. Heard Sri Manish Tiwari, learned counsel for the appellant, Sri J.K. Upadhyay, learned A.G.A. and Smt. Manju Thakur brief holder for the State.
2. The appellant Akbar was charged under Sections 376 and 506 I.P.C. for having committed forcible repeated sexual intercourse with the prosecutrix, his daughter-in-law, mother of two children in his house in Meet Nagar Amar Colony near Madeena Masjid, P.S. Loni, district-Ghaziabad about six months before the lodging of the F.I.R. against him by Rais Uddin, father of the prosecutrix at police station-Loni, district-Ghaziabad on 5.7.2008 at about 10:30 pm. On trial the learned Additional Sessions Judge, Court No. 13, Ghaziabad found accused guilty and sentenced him by his judgment and order dated 1.11.2011 to undergo imprisonment for life and a fine of Rs. 40,000/- under Section 376 I.P.C. and 6 years simple imprisonment and fine of Rs. 8,000/- under Section 506 I.P.C. and in case of default of payment of fine of Rs. 40,000/- and 8,000/- additional imprisonment of 8 months and 45 days respectively. Both the sentences were directed to run concurrently.

3. The facts of the case are that Rais Uddin, PW1 lodged a written complaint Ext. Ka-1 at police station-Loni, district-Ghaziabad on 5.7.2008 alleging therein that he had got his daughter married to one Azad son of Akbar, R/o Meet Nagar Amar Colony near Madeena Masjid, Ghaziabad according to muslim rites and customs about four years before lodging of the written complaint by him. His daughter had given birth to a male child after two years of her marriage and another male child was born to her about one month's before the incident. The maternal aunt of his daughter had gone to the matrimonial home of his daughter about a week before the lodging of the F.I.R. to meet her for inquiring about her welfare. On meeting her maternal aunt she broke down and told her that her father-in-law had been committing forcible sexual intercourse with her repeatedly and when he tried to have sexual intercourse with her forcibly again about six months before when her second child was about one month's old she saved herself by imploring her father-in-law to have mercy on her condition as she had just given birth to a child. The prosecutrix further informed her maternal aunt that his father-in-law and his other relatives possessed illicit arms and her father-in-law used to commit rape with her frequently by threatening her with his illicit arms and by putting her under the fear of killing her father and brother with the help of his nephew in case she divulged his activities to anyone or refused to succumb to his illegal demands. The prosecutrix requested her maternal aunt to inform her family members about her woeful tale and rescue her from the clutches of her father-in-law. It was further stated in the F.I.R. that neither the prosecutrix nor her one month's old child were being looked after in her matrimonial home and she along with her two sons had been abandoned in a secluded room in her matrimonial house to fend for herself and even her husband Azad who was under the influence of his father and his other family members was not bothered about her and his children and in case her father valued her life at all he should immediately take steps for rescuing her from her matrimonial home and if necessary take police help in this regard as her father-in-law and his other relatives were conspiring to eliminate her. It was also alleged in the F.I.R. that the informant Rais Uddin was compelled to invoke police help for securing the freedom of his daughter from the clutches of her father-in-law and his other relatives who were very dangerous persons were also trying to remarry Azad to someone in village Khekda. On the basis of the aforesaid written complaint Case Crime No. 981 of 2008 under Sections 376 and 506 I.P.C. was registered against the appellant-Akbar. The chick FIR Ext. Ka-5 was prepared by Constable Rajnish Kumar (PW5) and recorded in G.D. at serial number 32 at about 10:30 am. Soon after the registration of the F.I.R. the Investigating Officer Sub Inspector P.R. Riwala (PW6) geared into action and arrested the accused Akbar on the same date and recorded the statements of the informant and the victim. He also inspected the place of incident and prepared the site plan and also recorded the statement of Smt. Lali (PW3). The victim was sent for medical examination with the lady Homeguard Saroj to the District Hospital. The victim was medically examined by Dr. Rita Joshi (PW4) at District Hospital, Ghaziabad on 5.7.2008 at 4 pm and her injury report is on record as Ext. Ka2. Vaginal smears slides of the

victim were dispatched to the Pathology Department for ascertaining the presence of sperms. According to the report of the slides of her vaginal smears prepared by Dr. Pramila Gaur on 7.7.2008, Ext. Ka3, no sperms were found in the victim's vaginal smears. The supplementary report of the victim which was prepared by PW4, Dr. Rita Joshi after receiving the pathology report of victim's vaginal smears is on record as Ext. Ka4. The Investigating Officer PW6 after completion of investigation submitted charge sheet against the appellant-Akbar. Charge was framed against the appellant under Sections 376 and 506 I.P.C. on 28.01.2010. The accused denied the charge and claimed trial.

4. The accused appellant-Akbar in his examination under Section 313 Cr.P.C. denied the prosecution case and stated that informant, Rais Uddin had obtained a loan of Rs. 50,000/- (Rs. fifty thousand) from him for marriages of his two daughters and in order to avoid repayment of the aforesaid loan instituted the present criminal case against the appellant which is based upon false allegations. Although the accused did not examine any defence witness but filed documentary evidence vide list 35Kha, true copy of the application dated 12.8.2008 filed by the victim under Section 125 Cr.P.C. against her husband Azad which was pending before Addl. Chief Judicial Magistrate, Court No. 2, Muzaffar Nagar as Case No. 34/11 of 2009, under Section 125 Cr.P.C., P.S. Budhana, district- Muzaffarnagar and true copy of the written statement filed by the victim in Suit No. 595 of 2008 instituted by her husband Azad in the Court of Additional Civil Judge (JD) Court No. 3, Ghaziabad vide list 40Kha and the copy of the affidavit of the victim 37Kha filed by her in the same case, true copy of the complaint dated 18.8.2010 filed by Azad against his wife which was registered as complaint case No. 7757 of 2008, under Sections 494, 417 and 406 I.P.C., P.S. Loni, district-Ghaziabad, 38 Kha vide list 40Kha and true copy of the written statement filed by the victim in Case No. 595 of 2008 instituted by her husband, Azad against her, 41Kha.

5. Sri Manish Tiwari, learned counsel for the appellant has submitted that the prosecution story spelt out in the F.I.R. does not inspire any confidence as neither any date nor any place or time of any incident or instance of rape has been given and only bald and vague allegations have been levelled which are not corroborated by any tangible circumstance or any reliable evidence. The conviction of the appellant in the present case which is primarily based on the testimony of the solitary witness the victim herself whose evidence does not appear to be trustworthy in view of material contradictions, improvements and omissions in her evidence which does not stand corroborated either by any other witness or the medical evidence, cannot be sustained. He further submitted that the failure either of the wife of the accused or his son, the husband of the victim to object to the so called commission of forcible sexual intercourse by him with the prosecutrix in his home where he was residing with his entire family appears to be extremely unnatural and contrary to the normal human conduct. He further submitted that inordinate and unexplained delay in the lodging of the F.I.R. of the incident, despite it coming in the evidence of PW2 that after she complained

to her husband about his father's conduct, he had left her father's home and shifted with her to a separate house with the victim where she had lived with him for few months which must have given several opportunities to the prosecutrix to expose her father-in-law but she choose to keep mum. The aforesaid omission on her part has rendered the entire prosecution liable to be rejected in whole sale. The evidence of PW1 and PW3 which is even otherwise hearsay also does not appear to be trustworthy. The impugned judgment and order of conviction which is based upon surmises and conjectures is liable to be set aside. The sentence awarded is extremely harsh and wholly unwarranted.

6. Per contra, Sri G.K. Upadhyay, learned A.G.A. submitted that the prosecution case stands fully proved by the oral as well as the documentary evidence on record. The reasons for delay in lodging of the F.I.R. are to be found in the circumstances under which the heinous offence was committed by her father-in-law with her own daughter-in-law and it was quite natural for her to keep mum and tolerate the atrocities of her father-in-law before exposing him at the first opportunity which she got when her maternal aunt whom she could trust, met her in her matrimonial home, as there is uncontroverted evidence of PW2 on record proving that no one from her family had met her after her father-in-law had started forcibly committing sexual intercourse with her and considering the nature of the relationship between the accused and the victim and heinous offence committed by the accused which tends to threaten to break the fabric of the institution of family, the sentence awarded to the appellant can not be said to be excessive or unwarranted

7. Now the only point for determination in this appeal is whether the prosecution has been able to prove its case beyond reasonable doubt against the appellant?

Analysis of evidence

8. The prosecution in order to prove its case has led oral as well as documentary evidence. In oral evidence it has examined as many as six witnesses of which three witnesses are witnesses of fact. PW1, Rais Uddin is the father of the victim and the first informant of this case, PW2 is the victim, being the solitary eye witness, she is the star witness of this case and PW3, Lali is the maternal aunt of the victim to whom she had for the first time disclosed that the accused had been repeatedly raping her. PW4, Dr. Anita Joshi had examined the victim and prepared her medical report Ext. Ka2 and her supplementary report Ext. Ka4. PW5 Rajnish Kumar was constable clerk posted at police station-Loni at the relevant point of time and who had prepared the chick FIR Ext. Ka5 and had made the necessary entry in the G.D. No. 32. PW6 P.R. Riwala is the Investigating Officer of this case who prepared and submitted charge sheet against the accused.

9. Apart from the oral evidence, the prosecution had also produced documents which are available on record and which were duly approved by the witnesses and marked as Ext. Ka1 to Ka5:--

- "(i) Written report Ext. Ka1
- (ii) Injury report of victim Ext. Ka2
- (iii) Medical report of victim Ext. Ka3
- (iv) Supplementary report of the victim Ext. Ka4.
- (v) Chik FIR Ext. Ka5
- (vi) Charge sheet Ext. Ka7"

10. In order to ascertain whether the prosecution has successfully proved its case beyond all shadows of reasonable doubts or not the court has to examine the following main issues:--

- "(i) F.I.R. whether there is an unexplained and inordinate delay in lodging of the FIR.
- (ii) Whether the medical evidence corroborates the prosecution case.
- (iii) Credibility of witnesses"

11. Now we proceed to test the facts of the present case on the touchstone of the above mentioned issue.

12. FIR:-- The first issue relates to the credibility of the F.I.R. So far as the credibility of the FIR in this case is concerned, learned counsel for the appellant has questioned its reliability on the ground that there was inordinate and unexplained delay of more than six months in the lodging of the F.I.R. which has rendered the entire prosecution liable to be rejected in whole sale. The issue whether prosecution case is liable to be thrown out merely on the ground of delay itself or not has been considered and examined by the Hon"ble Supreme Court in several decisions, and it will be useful to refer to some of the authorities on the issue.

13. The Apex Court in the case of Apren Joseph alias Current Kunjukunju and others v. State of Kerala reported in , AIR 1973 Supreme Court 1, has observed as hereunder:--

"Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

14. In Kanhaiya Lal and others v. State of Rajasthan reported in , AIR 2013 Supreme Court 1940, the Apex Court held as hereunder:

"Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets

bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

15. Similar and relevant extract of the judgment delivered by Hon"ble Apex Court in the case of Ravinder Kumar and another v. State of Punjab reported in , AIR 2001 SC 3576, relevant extract of the aforesaid judgment is reproduce herein below:--

"The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

We are not providing an exhausting catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [Vide Zahoor v. State of UP (, 1991 Suppl.(1) SCC 372; Tara Singh v. State of Punjab

(, 1991 Suppl.(1) SCC 536); *Jamna v. State of UP* (, 1994 (1) SCC 185). In *Tara Singh* (Supra) the Court made the following observations:

"It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report." "

16. The Apex Court in *Tara Singh and others v. State of Punjab*, reported in , AIR 1991 SC 63, the Apex Court in paragraph 4 of its judgment has observed as hereunder:--

"4. It is well-settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the" report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these circumstances we are unable to agree with the learned Counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by P.W.2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 P.M. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to

all the concerned officers including the local Magistrate who received the same at about 2.45 A.M. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross-examination. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific overtacts are attributed to them as mentioned above. Therefore we see absolutely no grounds to interfere. The appeal is, therefore, dismissed."

17. In *State of Himachal Pradesh v. Gian Chand*, the Apex Court reiterated as follows:--

"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 in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

18. Thus the legal position which emerges after going through the catena of judgments referred to herein above is that it is settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases, but in the given circumstances of the case delay in lodging the FIR can be one of the factors which may corrode the credibility of the prosecution version but delay in lodging the FIR cannot be a ground itself for throwing away the entire prosecution version as given in the FIR and later substantiated by the evidence, unless there are indications of fabrication. The Court has further to seek explanation for delay and check the truthfulness of the version to inquire and if the court is satisfied then the case of prosecution cannot fall on this ground alone.

19. In the instant case the F.I.R. of the incident was lodged on 5.7.2008 by the victim's father, Rais Uddin alleging there that accused-Akbar who was the father-in-law of the victim had been repeatedly committing sexual intercourse with her forcibly since more than six months from the date of the lodging of the first information report in his residence at Meet Nagar Amar Colony, Ghaziabad. Thus in order to ascertain whether the prosecution has come up with any satisfactory explanation for the delay in lodging the F.I.R. it would be useful to look into the evidence of PW1, PW2 and PW3.

20. PW1, Rais Uddin, informant in his examination in chief has categorically stated that he had gone to meet his daughter about 9-10 months before the date on which his statement was recorded during the trial and then his daughter had not made any complaint and thereafter he did not meet her as he had gone to Maharashtra for earning his livelihood after 4-5 days of his meeting with his daughter and he had returned from Maharashtra about 10-15 days before the date on which he had learnt about the whole episode.

21. He had further stated in his evidence that when his sister-in-law (Sali) Lali had gone to meet his daughter in her matrimonial home about 8-10 days before the lodging of the F.I.R. his daughter had narrated the entire incident to her and Lali had told him about his daughter's plight about a week after returning from her daughter's matrimonial home.

22. PW2, victim in her evidence tendered during the trial has stated that when her maternal aunt, Lali had visited her matrimonial home about ten days before the lodging of the FIR she had told her that her father-in-law, Akbar had been repeatedly having sexual intercourse with her forcibly and had requested her aunt to narrate her plight to her father and after her aunt had informed her father about the occurrence he had come to her house on the date 5th of 2008 (she did not remember the month), and it was then she had narrated her story to her father for the first time, whereupon her father had taken her away from her matrimonial home and lodged the F.I.R.

23. It has come in the evidence of victim PW2 that no one from her parental home had come to meet her after her father-in-law had started having forcible sexual intercourse with her after about three years of her marriage. She has also stated in her evidence that she did not tell anyone about her plight as she was being constantly threatened by the accused that in case she told anyone about the activities of the accused he would kill his father and brother. The victim had told her husband Azad about his father's conduct but even he did not take any steps for protecting her although he had left his father's house and lived separately from his parents for a short period but had returned back to his father's house. The victim narrated her woeful tale to the first person of her family, her maternal aunt PW3, whom she met after the accused had started abusing the victim sexually. She was perhaps conscious of the fact so that if she made a complaint either to her neighbors or the relatives of his husband no one would believe her and she herself would have been defamed.

24. Similarly PW3, Lali also stated in her evidence that she had gone to meet the victim about three years before from the date of recording of her statement and on meeting her the victim had disclosed the activities of her father-in-law to her. She further stated in her evidence that she had not informed Rais Uddin, PW1, father of the victim about the incident immediately after meeting her as he was in Maharashtra and when he returned from Maharashtra after about 15-20 days she had informed him about the incident. She also stated that she had neither written any letter to Rais Uddin or informed him telephonically about the

incidents which had happened with the victim as he was expected to return from Maharashtra soon for attending the marriage of her sister's son and when she had met Rais Uddin during the marriage in Dhanaura, she had informed him about the plight of the victim. They had returned from Dhanaura after two days and thereafter Rais Uddin has given a hand written complaint to the concerned police station.

25. Thus, from the relevant extracts of the statement of PW1, PW2 and PW3, it transpires that although there was some delay in lodging the F.I.R. but the same cannot be attributed to the informant or can be said to be deliberate with the object of fabricating the accused in view of the social background and the illiteracy of the victim, her father and her sister-in-law. The delay in lodging the F.I.R. in our opinion has been satisfactory explained by PW1 and PW2.

26. Now coming to the second issue whether the prosecution case stands corroborated from the medical evidence on record or not, we find from the perusal of the injury report, medical report, supplementary report of the victim Ext. Ka2, Ka3 and K4 respectively as well as from the evidence of PW4 Dr. Anita Joshi that the allegation of rape does not stand substantiated but the same in our opinion will not discredit the prosecution case in view of the admitted factual position that the incidents of rape had taken place long before the date on which the victim was medically examined and that apart she was a mother of two children and habitual to sexual intercourse. So far as the quality of evidence and the credibility of witnesses in the present case is concerned we have noticed earlier that the prosecution had produced only three eye witnesses of fact in this case out of whom only one, the victim, PW2 is the eye witness.

27. There is no doubt according to settled legal position it's the quality and not the quantity which matters and conviction can be based on the sole testimony of a witness, if it finds corroboration with the other evidence available on record and inspires confidence. It is also well settled that minor discrepancies occurring in the statements of a witness can be ignored. Thus, in order to ascertain whether the conviction of the appellant can be sustained on the evidence of the solitary eye witness, PW2, the victim herself and whether the same inspires confidence or not it would be useful to extract herein below the relevant portions of her statement recorded during the trial:--

28. Thus on a close scrutiny of the statement of PW2 produced by the prosecution in this case, we do not find any serious inconsistencies, discrepancies, omissions, improvements and contradictions which can be said to affect the core of the prosecution case or raise doubts about its truthfulness and resultantly making the prosecution case unreliable and unworthy of credit.

29. The only discrepancy which is found in the evidence of the victim PW2 is that although in her evidence tendered during the trial she had stated that her husband, Azad had divorced her before lodging of the F.I.R. but the aforesaid fact does not find mention in the F.I.R. In our opinion the aforesaid discrepancy is not

so material as to discredit the evidence of PW2 because the primary question involved for determination in this case is that whether the prosecution has been able to prove by cogent evidence that the accused Akbar had repeatedly committed sexual intercourse with the victim forcibly or not and the aforesaid fact in our opinion has been fully established from the evidence of PW2 and mere failure of the informant to state in the F.I.R. that Azad, husband of the victim had divorced her even before the lodging of the F.I.R, in our opinion does not effect the credibility of the prosecution case at all.

30. In the present case the victim PW2 is admittedly an illiterate girl. The incidents of rape in this case had taken place within four corners of the maternal home of the victim and her father-in-law was the culprit.

31. The father of the victim was living in Maharashtra for earning his livelihood and her elder brother was living in Jharkhand and no one from her family had met her after her father-in-law had started having sexual intercourse with her forcibly till the day on which her maternal aunt had come to meet her and then she had promptly narrated her unfortunate story to her. Even her husband, Azad had failed to respond sympathetically when she had complained to him about his father's conduct and on the contrary he had called her impure and not fit for him although after the victim had told him about his father's activity he had shifted with her to a separate house and lived there for a short period but had soon returned back to his father's house. Under the circumstances and also considering the background of the victim and her family members no adverse inference can be drawn against the prosecution for some delay in lodging the F.I.R. or on the ground of their being some discrepancies in the evidence of PW1 and PW3 with regard to the time lapse between the information of the occurrence given by the victim to PW3 and communication thereof by PW3 to PW1 and the lodging of the F.I.R. The defence has not been able to come up with any plausible explanation for the alleged false implication of the accused at the behest of the victim and her father. The explanation given by the defence that the informant, Rais Uddin had instituted the criminal case in question against the accused-appellant, Akbar with a view to avoid the repayment of loan of Rs. 50,000/- which he had obtained from the accused for performing the marriages of his two daughters does not stand corroborated by any material on record. In view of the forgoing discussion, we have no hesitation in holding that the prosecution had successfully improved its case against the appellant beyond all reasonable doubts and the trial court has not committed any error in convicting the accused-appellant.

32. Now coming to the question whether the sentence awarded to the appellant by the trial court is unduly harsh, learned counsel for the appellant has submitted that the trial court has awarded maximum sentence prescribed for conviction under Section 376 I.P.C. although considering the age of the accused-appellant and the admitted fact that the victim has solemnized second marriage, a lessor punishment could have been awarded and since the appellant who is

presently in jail and has already undergone imprisonment of more than five years, the sentence awarded may be modified to the sentence already undergone by him or reduced to the minimum punishment prescribed under Section 376 I.P.C.

33. Per contra, learned A.G.A. Submitted that considering the nature of the offence, the manner in which it was committed and the relationship between the accused and the victim the sentence awarded by the court below does not warrant any interference by this Court.

34. Section 376 (1) of the Indian Penal Code along with his proviso is being reproduced herein below:--

"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 women 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."

35. Thus, keeping in view the proviso to Section 376 I.P.C. the Court has power to impose the sentence of imprisonment for a term of less than seven years in case of conviction under Section 376 I.P.C., for adequate and special reason. In the instant case there is no dispute about the fact that the appellant-Akbar is now an old man aged about sixty seven years and is in jail continuously since 1.11.2011 and there does not appear to be any complaint regarding his conduct as an inmate of jail. Further it has come in the evidence of PW1 [in the last page of his statement recorded during the trial] that the victim has solemnized second marriage and she is living with her second husband.

36. For the aforesaid reasons, we find that the ends of justice would be served in case the sentence and the fine awarded to the appellant is reduced.

37. Accordingly, we modify the sentence of imprisonment for life as well as the fine awarded by the trial Court to the appellant to the period of imprisonment already undergone by him and reduce the fine to Rs. 2,000/- and 5,00/- under Sections 376 and 506 I.P.C. respectively and in case of default in the payment of fine the appellant shall have to undergo further simple imprisonment for two months and one month respectively.

38. Accordingly, this appeal is allowed in part. The sentence awarded stands modified accordingly. If the appellant is not wanted in any other case he shall be released forthwith subject to payment of fine.