
(2013) 12 DEL CK 0160
In the Delhi High Court
Case No : Criminal A. 659 of 2011

Gurvinder Singh

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 164, 313, 342, 374

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 323, 33, 354, 363, 365

Citation : (2013) 12 DEL CK 0160

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : K. Singhal, for the Appellant; Richa Kapoor, Additional Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this appeal file u/s 374 of Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C."), the appellant seeks to challenge the impugned judgment and order on sentence dated 07.03.2011 and 08.03.2011, respectively whereby the learned Additional Sessions Judge-IV, Rohini District Court, Delhi has convicted the appellant for committing an offence punishable under Sections 376/365/323 of Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.") and sentenced him to undergo rigorous imprisonment for life together with imposition of fine of Rs. 5000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three months. So far as the offence punishable u/s 365 is concerned, the appellant was sentenced to undergo imprisonment for a period of five years and fine of Rs. 5,000/- and in default thereof, to further undergo simple imprisonment for six months. So far as the offence punishable u/s 323, is concerned, the appellant was sentenced to undergo imprisonment for a period of one year and fine of Rs. 1,000/- and in default thereof, to further undergo simple imprisonment for three months. The horrid incident unfolded by the prosecution in the charge sheet is as follows:

On 25.07.2008, father of the prosecutrix went to his native place. She was residing along with her family in an under construction house where no doors and windows were fixed. In the night, on the same day, she was sleeping along with her mother, brothers and sisters. In the midnight one Sardar came and picked her up. When he took her in a gali, she woke up and cried, but the accused caught hold of her mouth. The accused took her to his house. She was laid on the bed and thereafter the accused removed her clothes and his clothes also. Thereafter he started kissing her and bite her lips. Thereafter he put his urinating organ in her mouth and also inserted his penis in her vagina. After committing sexual intercourse, he wore his clothes and put clothes on her body. He also threatened her that if she told this incident to any one he will kill her with knife. Thereafter he brought the prosecutrix to her house, and left her there. Prosecutrix came to her mother and disclosed her the entire incident. Mother of the prosecutrix told the entire fact to her brother in law, who visited her a day after the incident. Then the police was called.

2. To bring home the charges, the prosecution in all examined 20 witnesses. After recording the evidence of the prosecution, the statement of the accused was recorded u/s 313 of Cr.P.C. and in his statement, he pleaded innocence and false implication by the prosecution. The defence also examined one witness.

3. Addressing arguments on behalf of the appellant, Mr. K. Singhal, Advocate contended that the appellant has been falsely implicated in the present case on the basis of his earlier conduct and character otherwise the prosecution has not succeeded in proving its case against the appellant beyond any shadow of doubt. The submission raised by the learned counsel for the appellant were fourfold: the first submission of the learned counsel for the appellant relates to identification and arrest of the appellant and on this aspect learned counsel for the appellant submitted that the prosecutrix failed to give complete description of the accused in the rukka where she only described the accused as a Sardar. The prosecutrix also failed to give any proper description as to whether such Sardar was tall or had a short height or whether he was of good health or having frail body. The prosecutrix also did not say anything about the place where she was taken by the accused. Learned counsel for the appellant also argued that during her entire examination-in-chief the prosecutrix had only referred to some Sardar who had committed wrong with her and even in court when she was asked to identify the accused then she pointed out to one Sardar present in the court and no finding has been recorded by the learned Trial Court that the witness had correctly identified the accused person. Learned counsel for the appellant further argued that PW-19 SI Usha Sharma in her deposition stated that the accused was produced before the court on 29.07.2008 in muffled face when he had refused to join the TIP where-after she along with the prosecutrix and her father were coming out from the court room then she identified the accused and thereafter she had recorded their statement. Deposing absolutely contrary to the same, PW1-father of the prosecutrix, during a leading question put to him by learned APP, deposed that he had never visited the Rohini Court and he did not identify

the accused present in the court. In his cross-examination, he categorically denied the suggestion of his visit to Rohini Court and that the accused was identified by his daughter on that date. Based on these submissions, learned counsel for the appellant submitted that identification of the accused in the present case is highly doubtful and the police under social pressure to resolve the case got the accused falsely implicated in the present case. Learned counsel for the appellant also submitted that the accused was already under arrest with the police on 28.07.2008 and this fact also has been duly mentioned by SI Usha Sharma in her said application Ex. PW19/E where she stated that the accused was arrested on being identified by the prosecutrix, if it was so then there was no occasion for conducting TIP of the accused on 29.07.2008. Learned counsel for the appellant also argued that during the TIP proceedings, the appellant had refused to participate as his face was already shown to the prosecutrix on 28.07.2008. Learned counsel for the appellant also argued that in her statement recorded u/s 164 Cr.P.C. the prosecutrix had taken the name of the accused whereas she was not aware about his name till the TIP proceedings were conducted as per own case of the prosecution.

4. Learned counsel for the appellant submitted that as per the arrest memo, the appellant was arrested on 29.07.2008 at 9.00 a.m. but the said date and time of arrest is totally incorrect as the appellant was already arrested on 28.07.2008 and this fact is born out from the application moved by SI Usha Sharma seeking TIP of the appellant on 28.07.2008. Learned counsel for the appellant also submitted that as per the casualty slip of Deen Dayal Upadhyay hospital, the appellant was examined on 29.07.2008 at 9.54 a.m. and in the MLC of the prosecutrix proved on record as Ex. PW-8/A, DD No. 288/08 was mentioned whereas as per the case of the prosecution the appellant was first arrested by the IO and then taken for MLC. The contention raised by the counsel for the appellant was that if the FIR had already been registered by that time, then why the details of F.I.R. were not found mentioned in the MLC.

5. The second submission raised by the learned counsel for the appellant relates to medical evidence not supporting the case of the prosecution. On this count learned counsel for the appellant submitted that as per the MLC of the prosecutrix proved on record as Ex. PW-4/A, the doctor clearly opined that the hymen of the prosecutrix was torn but not fresh. Learned counsel for the appellant further submitted that as per the casualty slip of the MLC even no injuries were found on the private part of the prosecutrix and only one injury was found in her left eye for which she was referred for eye examination. Learned counsel for the appellant submitted that undergarment of the prosecutrix was collected by the prosecution and sent for its analysis to FSL and likewise the semen sample of the accused was also sent to the CFSL but the prosecution failed to prove on record any forensic evidence proving the commission of any sexual act by the appellant with the prosecutrix. Learned counsel for the appellant also submitted that in the absence of any medical evidence to support any sexual assault on the prosecutrix, and to link the appellant with the

commission of the said offence, the appellant cannot be held liable for the crime, which he never committed.

6. The third submission of the learned counsel for the appellant relates to delay in lodging FIR and in compliance of Section 157 Cr.P.C. On this score learned counsel for the appellant submitted that there was a gross delay of 2-3 days in lodging the present FIR as the incident had taken place on the intervening night of 26th July 2008 while the matter was reported to the police on 27th July 2008 at 05:45 p.m. Learned counsel for the appellant further argued that PW-1, father of the prosecutrix in his examination-in-chief clearly deposed that he was told about the incident only on 28th July, 2008 and he returned to Delhi after four days. The contention raised by the counsel for the appellant was that if anything wrong was done to the prosecutrix then what prevented the mother to inform her husband immediately and such slackness on the part of the prosecutrix and her mother certainly creates doubt in the story of the prosecution. Learned counsel for the appellant also argued that PW-2, mother of the prosecutrix in her deposition stated that they were living at a distance of 1 km from the residence from her devar but no immediate information was given by her to her brother in law (Devar) and she kept on waiting till her Devar himself had come to her home. Learned counsel for the appellant also submitted that PW2-mother of the prosecutrix did not raise any alarm when she did not find the presence of her daughter in the midnight. The submission of the counsel for the appellant was that all these facts depict unnatural conduct of the prosecutrix and her parents on whose testimonies the case of the prosecution mainly rests. Learned counsel for the appellant also argued that the copy of the FIR show that it was seen by the learned Magistrate on 28.07.2008 and therefore, it becomes evident that the FIR is an ante date one and it is only after taking the accused in police custody, the entire proceeding took place.

7. Learned counsel for the appellant also argued that there is a material contradiction in respect of place of incident by the prosecutrix as PW-18, ASI Umed Singh deposed that Kripal Singh PW-16 had told some rough address of Sardar boy. Learned counsel for the appellant further pointed out that the prosecutrix had pointed out the place of occurrence to ASI Umed Singh PW-18 while PW-19 in her deposition stated that ASI Umed Singh was relieved prior to reaching the spot.

8. Learned counsel for the appellant also argued that the disclosure statement of accused, did not result into discovery of any fact and therefore, discovery of place of incident is completely hit by the provisions of Section 27 of the Indian Evidence Act. Lastly, learned counsel for the appellant also argued that while recording the statement of the appellant u/s 313 Cr.P.C. he was not specifically put that it was he who committed wrong act with the prosecutrix and similarly while putting question No. 15 he was not asked whether the prosecutrix had seen him in her house the same being place of incident. Based on the above submissions, learned counsel for the appellant urged that the entire case of the

prosecution is shaking and does not succeed to prove the same beyond any shadow of doubt, therefore, the appellant deserves the benefit of doubt and resultantly acquittal in the present case.

9. On the point of sentence, learned counsel for the appellant submitted that the appellant is having a nuclear family consisting of his father who is aged about 90 years and the appellant has already undergone about 6 years RI and during his incarceration he has completely reformed himself. Learned counsel for the appellant thus pleaded that the appellant should be given a chance to fully reform himself so that he can serve the society and the needy people besides his old aged father.

10. The aforesaid contentions raised by the counsel for the appellant were strongly refuted by Ms. Richa Kapoor, learned Additional Public Prosecutor for the State. Learned APP submitted that in the present case, Prosecutrix was the star witness and she remained consistent in all her statements. Learned APP also submitted that PW3 also clearly identified the accused and the place of incident. Learned APP also submitted that as per the settled legal position even uncorroborated testimony of the prosecutrix can result into conviction of the accused in a rape case but in the present case, the testimony of the prosecutrix was fully supported by her father (PW-1) and her mother (PW-2). Learned APP for the state also argued that the testimony of the Prosecutrix also got full support from the testimony of witnesses to investigation being PW-18, PW-19 and PW-20. Learned APP further argued that the testimony of these witnesses remained uncontroverted and the defense did not succeed to create even a shadow of doubt on their testimonies. Learned APP also argued that the incident of rape was also corroborated by the MLC of the prosecutrix (PW-4/A) specifying that the prosecutrix had received injuries on face and her hymen was found torn. Learned APP for the state also submitted that as per the FSL report also semen were found on top and skirt of prosecutrix, supporting the testimony of the prosecutrix that the accused had committed sexual assault on her. Learned APP for the state also argued that conduct of the accused by refusing TIP, is also a relevant evidence against him. Ld APP also submitted that the accused is a habitual offender and does not have clean antecedents. Ld. APP submitted that the present appellant was already facing criminal prosecution for committing such crimes vide FIR No. 532/02 and FIR No. 366/04 under sections 33/511/363/354 IPC and sections 363/366/376/511 IPC respectively. Learned Additional Public Prosecutor also argued that even the Defence witness, Swaroop Singh, who is the father of the accused in his testimony before the Court admitted that the accused was a drunkard and had bad company.

11. Learned APP also submitted that as per the report of National Crime Bureau, Ministry of Home Affairs, the numbers of rape cases are increasing every year and this heinous crime destroys the body and soul of a woman and should be sternly dealt with.

12. We have heard learned Counsel for the parties at considerable length and

given out thoughtful consideration to the arguments advanced by them. We have also perused the Trial Court record.

13. In the series of many rapes being committed by the sex starves, sex depraved and sex maniacs not even sparing the minor children below the age of 12 years, the case in hand is an example of another horrifying incident of rape committed by this appellant on a prosecutrix who had not even seen ten summers of her life. It is an irony of fate that a family who is already a victim of poverty having no shelter over their head to save themselves from the heat of summers and chill of winters either sleep on the public pavements, sub-ways, buildings and houses under construction in different weather met their ultimate devastation when during the night one of their family member being a girl of ten years was take away by some sex starved person, hunting to take some such girl child to satisfy his beastly lust for sex. On the intervening night of 26th July 2008 accused took up the prosecutrix at about 02.30 a.m. from an under construction house while she was in the med of her sleep alongwith her mother, sister and brothers. Father of the prosecutrix was not there on that night as he had gone to his native place. After prosecutrix was taken away by the accused she got awakened on the way and started crying but the accused gagged her mouth. Prosecutrix, also pleaded for mercy to leave her but nothing could change the mind of the accused who was bent upon ravishing the body and soul of the prosecutrix, a child of a tender years of age, whose body was not yet logically grown up to take such an onslaught. As per the statement given by the prosecutrix u/s 164 Cr.P.C. as well as court deposition the appellant after she was taken out to his house had removed her clothes and then removed his own clothes. Thereafter, the accused had put his organ of urinating in her mouth as well as in her private part of urinating. After committing the said acts the appellant threatened her that if she dare to tell the incident to anybody then he would kill her with a knife. The accused then brought the prosecutrix back by covering her eyes with his hands and left her near the under-constructed house. This incident was immediately narrated by the prosecutrix to her mother. The mother of the prosecutrix in the absence of her husband could not narrate the said incident to anybody and it is only when her devar-Kirpal Singh, who visited her on 27th July 2008 came, that she had narrated the said incident to him and thereafter the matter was reported to the police. ASI Umed Singh (PW-18), alongwith constable Baljeet reached the spot of the occurrence after the first information was lodged to the police vide DD No. 14A proved on record as Ex. PW-14/A. The prosecutrix by that time was already removed to the hospital by PCR Van alongwith her mother (PW-2). PW-18 had then collected the MLC of the prosecutrix and recorded the statement of the prosecutrix proved on record as Ex. PW-2/A and thereafter prepared the rukka (Ex. PW-18/A), based on which FIR was registered against the accused under Sections 363/376/323 IPC. PW-18 had also seized the parcels and one sample was sealed and handed over at D.D.U. Hospital and proved on record as Ex. PW-18/B. Further investigation of the case was handed over to SI Usha Sharma. The place of occurrence i.e. house

bearing No. WZ-C-83 Gali No. 5, Shiv Nagar, New Delhi, was pointed out by the prosecutrix to the said SI Usha Sharma and on pointing out, a memo pointing out the spot (Ex. PW-2/D) was made.

14. On 29th July 2008 the accused was apprehended by the police from a street, Shiv Nagar, Jail Road, New Delhi and his arrest memo was proved on record as Ex. PW-7/A, personal search memo was proved on record as Ex. PW-7/B, and disclosure statement was proved on record as Ex. PW-7/C. The accused was medically examined and after his medical examination, the doctor had handed over to Constable Virender, one sealed parcel containing top and skirt and sample seal which was proved on record as Ex. PW-7/E. TIP proceeding of the accused were held by Magistrate on 28.07.2008 and the accused had refused to participate in the TIP Proceedings on the ground that he was already shown to the prosecutrix. The statement of the prosecutrix was recorded u/s 164 of Cr.P.C. and the same was proved on record as Ex. PW-3/A. The MLC of the prosecutrix was proved on record as Ex. PW-4/A in the testimony of Dr. Monika Suri (PW-4). As per the said MLC Ex. PW-4/A, the prosecutrix had not attained menarche and on her local examination, her hymen was found torn but not fresh. The exact observations given by Dr. Sarita, gynecologist at the time of examination of the prosecutrix, are as under:-

- a. There were signs of injury present on the face.
- b. sub-conjunctivital haemorrhage present.
- c. On local examination hymen torn, not fresh but does not allow PV examination.

15. As per MLC of the accused proved on record as Ex. PW-8/A, in the testimony of Dr. Vineet Kumar (PW-8), he was examined by Dr. Santosh, Junior Resident of D.D.U. Hospital and as per his examination, nothing was found to suggest that the accused was not able to perform sexual act. On local examination, the doctor also found small abrasions on his left wrist, swelling on right and multiple bruises over upper and lower back. The statement of the prosecutrix was fully corroborated by the testimony of father of the prosecutrix (PW-1) and mother of the prosecutrix (PW-2) and statement of uncle of the prosecutrix-Mr. Kirpal Singh (PW-15). Prosecution had also examined owner of property No. WZ-C-83, Shiv Nagar, Jail Road, New Delhi as PW-5 to prove that earlier, father of the accused-Saroop Singh was residing in the said property as a tenant alongwith his wife. He also deposed that he wanted to repair his house, therefore father of accused-Swaroop Singh shifted to WZ-C-83, Shiv Nagar, Jail Road, New Delhi. The prosecution has also examined the owner of property No. WZ-C-83, Shiv Nagar, Jail Road, New Delhi, who in his deposition confirmed the letting of the ground floor of the house in favour of Swaroop Singh. He also confirmed that the present accused was also residing with his father in the same very house. He also identified the accused in court at the time of his deposition. The house bearing no. WZ-C-83, Shiv Nagar is the same house where the accused had committed rape upon the prosecutrix.

16. The first contention raised by the counsel for the appellant was that prosecutrix failed to give any proper description as to whether such Sardar was tall or had a short height or whether he was of good health or having frail body. The prosecutrix also did not say anything about the place where she was taken by the accused. In any rape case or case of sexual assault the main evidence is of prosecutrix herself. The evidence of the prosecutrix in such like cases is similar to the evidence of an injured, complainant or witness. It is a settled legal position that the sole testimony of prosecutrix, if found to be reliable by itself, may be sufficient to convict the perpetrator of the crime and no corroboration of her testimony would be necessary. The only test is that such uncorroborated testimony of prosecutrix should be of sterling quality appearing to be natural, truthful and reliable. In the matter of Md. Iqbal and Another Vs. State of Jharkhand, , the Hon"ble Supreme Court held as under:

There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

In Narender Kumar Vs. State (NCT of Delhi), , this Court has observed that even if a woman is of easy virtues or use to sexual intercourse, it cannot be a licence for any person to commit rape and it further held:

24. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.

17. In the present case the Prosecutrix during her deposition in court clearly identified the accused as the person who committed rape on her and also admitted that during the investigation she also pointed out the place where the accused had raped her. The site plan prepared by the police of the place of incident is Ex. PW2/B and Ex. PW2/C. Even in her statement to the Police on the basis of which F.I.R. was registered, she claimed that the accused was some "Sardar". The testimony of prosecutrix was also corroborated by the testimony of PW-1, PW-2 and PW-15. Further as per the MLC of the accused proved on record as Ex. PW-8/A, the accused had also received injuries on his body. However he gave no explanation of these injuries during his examination u/s 313 Cr.P.C. Thus non explanation of these injuries also lend credence to the case of the prosecution that the it was the accused only who committed the alleged offence

with the prosecutrix. It would be useful to refer here to the following observations of the Apex Court in the case of Dr. Sunil Clifford Daniel Vs. State of Punjab, as under:

when the attention of the accused is drawn to such circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances.

18. Further the defence has not led any evidence to contradict the said evidence of the prosecutrix that at premises bearing No. WZ-C-83, Shiv Nagar, somebody else was residing then the accused and his father. PW-5 and PW-6 had also stated in their evidence that earlier the accused was residing with his father in property bearing No. WZ-C-83, Shiv Nagar and later he had shifted to property in question where the prosecutrix was raped.

19. Thus by the mere fact that PW-1 turned hostile while identifying the accused or that the prosecutrix stated the name of the accused in her statement recorded by the Magistrate u/s 164 Cr.P.C., we cannot lose our sight from the fact that the prosecutrix clearly pointed out the accused to be the person who had committed rape on her. It is a well settled legal position that minor contradictions or insignificant discrepancies whether in the testimony of prosecutrix or the other witnesses, which otherwise are reliable, should not be a ground to throw out the case of the prosecution. In the matter of Jugendra Singh Vs. State of U.P., it was held by the Hon"ble Apex Court as under:

The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

20. In the background of aforesaid very convincing and clinching evidence, the contention raised by counsel for the appellant, is found to be devoid of any merit and the same deserves outright rejection. To say that the prosecutrix had failed to identify the accused would amount to adding insult to the injury to the prosecutrix who had already suffered. The prosecutrix had not only identified the

accused in court but she had also clearly disclosed the place where she was raped by the accused.

21. Second contention raised by the counsel for the appellant was that as per the arrest memo, the appellant was arrested on 29th July 2008 at 9 AM but the said date and time as indicated in the arrest memo was totally incorrect as the appellant was already arrested on 28th July 2008 as borne out from the application moved by SI Usha Sharma seeking TIP of the appellant on 28th July 2008. This contention raised by counsel for the appellant is completely devoid of any merit as the matter was reported to the police on 27th July 2008 as per DD No. 14A proved on record as Ex. PW-14/A and the accused in this case was arrested on 29th July 2008 as per arrest memo proved on record as Ex. PW-7/A. TIP of the appellant was conducted before Smt. Sumita Garg, Metropolitan Magistrate on 29th July 2008. In the face of this evidence, it becomes quite apparent that on the application proved on record as Ex. PW-19/E, the Investigating Officer had put a wrong date of 28th July 2008 and this mistake on the part of the Investigating Officer cannot be so detrimental to throw out the entire prosecution case. This feasible argument on behalf of counsel for the appellant falls flat from the endorsement made on application Ex. PW-19/E which endorsement clearly shows that this accused was produced before the Magistrate on 29th July 2008 and he was then directed to be produced before the learned link Magistrate-Ms. Sumita Garg on the same day. This argument of counsel for the appellant is therefore misconceived and meritless.

22. The next contention raised by the counsel for the appellant was that the medical evidence as well as the forensic evidence does not support the case of the prosecution. In the present case the MLC of the prosecutrix (Ex. PW4/A) was proved on record by Dr. Monika Suri. As per the MLC, the doctor who conducted the medical examination of the prosecutrix opined that the hymen of the prosecutrix was found torn, there were signs of injury on the face and sub-conjunctival haemorrhage was also present. The torn condition of the hymen of a child of tender years certainly is a strong circumstance proving the fact that she was raped by the accused. We are not stating here that this condition of hymen being torn always leads to infer that the girl has been raped or that in a case where the hymen is not torn would lead to an inference that the rape was not committed at a girl, as the fact of each case will be decisive to form one or the other view and no straight jacket principle can be laid down in this regard. In the present case apart from hymen being torn, there are also injuries on the face and sub-conjunctival haemorrhage also present. Further as per the FSL report proved on record as Ex. PW-17/A & B, human semen were found on the top and the skirt of the prosecutrix, which clearly support her testimony that a sexual assault was committed upon her. Thus in the light of the above factual matrix as well as the statement of the prosecutrix, we do not find any merit in the contention of the counsel that the medical evidence does not support the case of prosecution.

The next contention raised by the counsel for the appellant was that there was a delay in lodging the F.I.R. In the present case, the alleged incident took place on the intervening night of 25-26.07.2008. The prosecutrix as per her statement in court immediately after the alleged incident informed her mother but at that time her mother had no one in the house except her kids. However on 27.07.2008, when her brother in law visited her house, she immediately informed him about the alleged incident, where upon he called up police and on the same very day the F.I.R. was registered. Thus the total delay was of one day. In the light of facts and circumstances stated above, we do not find that the delay is such as can hits the roots of the prosecution case. So far as the contention raised by the counsel for the appellant that there was non-compliance of Section 157 of the Code of Criminal Procedure, suffice it to say that the FIR in the present case was registered on 27.7.2008 at 5.45 p.m. and as per own submission of the counsel for the appellant the same was received in the Court of concerned Magistrate on 28.7.2008 i.e. within 24 hours from the time of the registration of the FIR and, therefore, it cannot be said that there is any non-compliance of Section 157 Cr.P.C.

23. The next contention raised by the counsel for the appellant was that the disclosure statement of the accused also did not result into discovery of any fact. In the present case, the learned trial Court had not taken into consideration the disclosure statement made by the accused, apart from this there is sufficient evidence on record to prove the guilt of the accused.

24. Dealing with the next contention raised by the Counsel for the appellant that the prosecutrix had pointed out the place of occurrence to ASI Umed Singh PW-18 while PW-19 in her deposition stated that ASI Umed Singh was relieved prior to reaching the spot. As per the testimony of PW-18, although he deposed that the place of occurrence was pointed out by the prosecutrix, but he never deposed that the same was pointed out in his presence and therefore it cannot necessarily be taken as a contradiction between the statement of PW-18 and PW-19. Moreover if it is taken as a lapse on the part of the investigating officer, such lapses on the part of the Investigating team of the police are not uncommon and if the criminal Courts start giving benefits to the accused persons because of such minor lapses, then perhaps no criminal case will end in conviction of the actual offenders of crime against whom there may occur other strong evidences to prove them guilty of offence. Thus although there is a lapse on the part of PW-19, yet it would not be of any benefit to the accused.

25. Dealing with the next contention raised by the Counsel on behalf of the appellant that while recording the statement of the appellant u/s 313 Cr.P.C., as per question no. 3, he was not specifically asked that it was he who committed wrong act with the prosecutrix and similarly while putting question No. 5 he was not asked whether the prosecutrix had seen his house the same being place of incident. It is a settled legal position that the object of section 313 Cr.P.C. is only to give an opportunity to the accused to explain the evidence adduced against

him by the prosecution. In the matter of: Basavaraj R. Patil and Others Vs. State of Karnataka and Others, it was held by the Hon''ble Apex Court that the sole object of section 313 Cr.P.C. is for the benefit of the accused, as under this provision the opportunity is given to the accused to explain the incriminating circumstances appearing in the evidence against him. In the matter of Jai Dev Vs. The State of Punjab, , Gajendragadkar, J. speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus:

The ultimate test in determining whether or not the accused has been fairly examined u/s 342 would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him that would no doubt be a serious infirmity.

26. In the present case the accused had been provided ample opportunity to explain the incriminating evidence produced against him by the prosecution, as the learned trial Court had very aptly put to the accused all the evidences appearing against him at the time of recording his statement u/s 313 Cr.P.C. As per the record in question no. 3 of the examination the accused, the accused was asked about the entire incident as "Sikh fellow" and not as "you accused", however it shall be noted that it was very much clear to the accused that the Sikh fellow pointed out by the court is none other than the accused himself. Similarly as per question no. 5, the accused was specifically asked that it is in evidence against you that prosecutrix pointed out to the Police to the place of incident, thus he got an opportunity to answer if the prosecutrix had seen the place of incident or not. The Hon''ble Apex Court in the matter of Bakhshish Singh Dhaliwal Vs. The State of Punjab, held that u/s 313 Code of Criminal Procedure questions are put to an accused to enable him to explain any circumstances appearing in the evidence against him, and for that purpose, the accused is also to be questioned generally on the case, after the prosecution witnesses have been examined and before he is called on for his defence. It is not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section.

27. Dealing with the last contention of the appellant on quantum of sentence. In a case involving rape of a minor child, the consistent view of the Apex Court has been that crime of rape is a very heinous crime and it becomes more heinous when it is committed with a child of tender years of age. Rape is a crime not only against the human dignity but it is against the society as a whole. It has also been held that physical scar on a rape victim might heal up with time but the mental scar will always remain alive, as when a woman is ravished then what is inflicted on her is not merely a physical injury but a deep sense of deathless shame. It has also been held that the measure of punishment in a case of rape

cannot just depend upon social status of the victim or the accused, it must depend upon the conduct of the accused, state and age of the sexually assaulted female and the gravity of the criminal act. It needs no reiteration that with the unexpected rise in the rape cases there appears to be no deterrence of law or fear in the minds of the perpetrators of the crime and had it been so the ratio of such crimes would have definitely come down instead of the same being increased. No doubt after the recent mass protest and awakening in the society there can visibly be seen a difference in the approach and tendency of the women, feeling comparatively stronger to come forward to raise their voice and take cudgel against such onslaughts for sexual assaults, thereby sending a clear message to the society that they will no more tolerate or forbear any such act of treating women as mere sex objects, however there is still a long way to go to curb this menace from the society. In the case of *State of Rajasthan Vs. Madan Singh*, , while dealing with the quantum of punishment, it was held by Hon''ble Supreme Court as under:

The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

28. In the matter of *Shyam Narain Vs. The State of NCT of Delhi*, , it was held by the Hon''ble Apex Court as under:

In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of

physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned Counsel for the Appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court.

29. In the facts of the case the father of the appellant is an old aged person of ninety years. He pleaded for showing mercy to his son, the appellant herein, as he has already undergone six years of sentence in jail. No doubt it is most unfortunate for such a father who is an ex-army officer, to face shame for the acts of his son, who is a living beast, having no respect or regard for women and love for small children. Not only in this case alone but the appellant herein had already been convicted in two other cases. In one case he had been convicted for

the offence of kidnapping and outraging the modesty of women under Sections 363/354 vide FIR No. 532/02 and in another case he was convicted for the offence of rape and kidnapping under sections 363/366/376/511 IPC vide FIR No. 366/04. In this case also during the night he picked up the prosecutrix when she was fast asleep and ravished her chastity and destroyed her soul. What a plight of a poor girl who was not allowed to even sleep in an unobstructed house, having no other place for shelter and then becoming a victim at the hands of a person like the appellant herein, who moved out of his house during night to pick such helpless poor girl to satisfy his lust for sex. Can such a person deserve any mercy or leniency, who is a habitual offender? Answer certainly is emphatically no. The appellant appears to be a habitual offender and is a menace to the society. The chances of his being reformed and rehabilitated are bleak.

30. In the light of the fact and the circumstances stated above, we uphold the judgment and order on conviction passed by the learned Trial court. Finding no merit in the appeal, the appeal filed by the appellant is dismissed.