
(2006) 10 DEL CK 0200

In the Delhi High Court

Case No : Criminal Appeal No. 431 of 1999

Mohd. Alam through the Superintendent	APPELLANT
Vs	
The State (NCT of Delhi)	RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 313
Penal Code, 1860 (IPC) — Section 228A, 376

Citation : (2007) CriLJ 803

Hon'ble Judges : Madan B. Lokur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Roopesh Kumar Sharma, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Appellant is aggrieved by the judgment and order dated 16th April, 1999 passed by the learned Additional Sessions Judge in Sessions Case No. 94/1998. By the impugned judgment and order, the Appellant was convicted of an offence punishable u/s 376 of the Indian Penal Code (hereinafter referred to as the IPC) for raping a minor girl of 10 years of age. On 19th April, 1999, the Appellant was heard on the question of sentence and thereafter by an order passed on the same day, he was punished with imprisonment for life and a fine of Rs. 500/-. In default of payment of fine, the Appellant is required to undergo further rigorous imprisonment for four months.

2. Allegations against the Appellant are that on 23rd August, 1997, at about 11.00 p.m. he had taken his step-daughter, a girl aged about 10 years, to a park near Sanjay Jheel, Trilok Puri, Delhi. It is alleged that over there, he raped her. At about 2.00 a.m. he was spotted crossing the road with her, by one Mohd. Farukh. According to Mohd. Farukh, the girl looked terrified and the Appellant took her to a tap in the vicinity and gave her a bath. Mohd. Farukh noticed bloodstains on the salwar of the girl and, Therefore, he informed her mother

(wife of the Appellant) and the girl's maternal uncle (Inayat Ali). The police was also called and a report was lodged in which the Appellant was accused of rape.

3. After investigations were complete, the police filed a charge sheet u/s 173 of the Code of Criminal Procedure (hereinafter referred to as the CrPC) and on 11th February, 1998, a charge u/s 376 IPC was framed against the Appellant, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as 16 witnesses and the Appellant declined to produce any evidence in his defense. The statement of the Appellant was recorded u/s 313 of the CrPC on 13th November, 1998.

5. Of course, it is extremely unlikely to find an eyewitness to a rape, particularly an offence such as the one that we are concerned with. For this reason, the learned Trial Judge mainly relied upon the evidence of the prosecutrix PW-9 and also certain circumstances that appeared from the testimony of other witnesses.

6. From the evidence of PW-4 Ajay, it appears that on the fateful night, he was taking dinner in his house in Aditya Apartments and his guests were present. The elder sister of the prosecutrix used to work in his house and, perhaps to help her, the prosecutrix had also been brought along to the house. At about 11.00 p.m. he noticed both the sisters talking in whispers and on inquiry he was told that their father had come in an auto. Thereafter, the prosecutrix went away. PW-4 admitted that he had not seen the father of the prosecutrix at the time. The next day he came to know of the incident. From this it does appear to be quite clear that the prosecutrix went away with somebody at about 11.00 p.m. on the fateful night.

7. PW-12 Mohd. Farukh stated that at about 12.30 a.m. he closed his betel shop and had a meal in the jhuggi of one Jahangir and thereafter at about 2.00 a.m. he came back to his shop. At that time he saw the Appellant and the prosecutrix crossing the road. The prosecutrix looked terrified and he saw the Appellant take her to a nearby water tap and give her a bath. The witness saw bloodstains on the salwar of the prosecutrix and got suspicious. He then went to her mother Saira Begum and her uncle Inayat Ali and called them. When they reached the water tap, they inquired from the prosecutrix what had happened and she told them that the Appellant had raped her near the Jheel. The witness then went to the police station and by the time the police came, the Appellant had run away. The prosecutrix was then taken to a hospital.

8. In cross-examination, PW-12 Mohd. Farukh stated that the mother of the prosecutrix had washed her clothes and at about 2.20/2.25 a.m. he had gone to call the police and around 3.00 a.m. the prosecutrix was taken to the hospital where she remained for about 14-15 days. The witness was asked whether the clothes of the prosecutrix were washed with soap and he answered in the negative.

9. It may be mentioned that the learned Trial Judge believed the testimony of

this witness and noted that there is nothing to show that he bore any ill will against the Appellant. We agree with this conclusion.

10. The mother of the prosecutrix was examined as PW-3. She confirmed that when she met her daughter, she was bleeding and had bloodstains on her clothes near her private parts. However, this witness turned hostile but nevertheless confirmed that her daughter remained in hospital for about 15 days.

11. The uncle of the prosecutrix, Inayat Ali was examined as PW-5. He confirmed that at about 2.00 a.m. Mohd. Farukh woke him up and took him to the tap where the prosecutrix was standing with wet clothes and that on inquiry she told the witness that the Appellant had raped her. Thereupon, the witness called the police but rather surprisingly, he then states that he went back to sleep. However, he confirmed that the prosecutrix was taken to the hospital at about 3.15 or 3.30 a.m.

12. The above evidence points to the fact that some incident had occurred with the prosecutrix, which caused her to bleed from her private parts and this resulted in some bloodstains on her salwar. The Appellant, her stepfather, was accompanying her and had given her a bath under a tap near the park. Mohd. Farukh had seen the Appellant and the prosecutrix together and the prosecutrix looked terrified and was given a bath by the Appellant. Mohd. Farukh called the mother and uncle of the prosecutrix and also the police who came there between 3.00 a.m. and 3.30 a.m. when the prosecutrix was taken to the hospital.

13. The prosecutrix was examined as PW-9 and after taking her voice dire, the learned Judge allowed her statement to be recorded, without oath.

14. The prosecutrix stated that at about 11.00 p.m. she was working in Aditya Apartments and at that time, her stepfather took her in a three-wheeler scooter to the Jheel where he did some galat kaam with her. The Appellant showed her a knife and told that he would kill her if she disclosed it to anyone and thereafter he removed her clothes and took off his own clothes and had sexual intercourse with her. The prosecutrix felt pain on her private parts and became unconscious. She later regained consciousness and was taken by the Appellant near the tap and given a bath. Her mother then changed her clothes but she did not tell her mother what had happened because the Appellant had threatened to kill her if she disclosed the events to anyone. She says that the police then took her to the hospital where she told her mother what had happened. She denied receiving any injury while bathing and confirmed that she was bleeding profusely from her private parts.

15. In the hospital an MLC was recorded and this is Exhibit PW-11/A. As per the MLC, the prosecutrix alleged that "somebody" had raped her. The doctor recorded that she was allegedly raped at approximately 11.00 p.m. and that she was bleeding.

16. On 24th August, 1997, the Appellant was arrested and medically examined

as per the report Exhibit PW-7/A. In the report, it was opined that there is nothing to suggest that the Appellant is incapable of performing sexual intercourse. It was found that his genitals were well developed and no smegma was present, nor was there any sign of an injury.

17. The salwar of the prosecutrix and the pant and shirt of the Appellant were sent for Chemical examination. The report of the Forensic Science Laboratory (FSL) (Exhibit PW-16/A and 16/B) confirm that all three clothings had bloodstains of AB group of human origin, which confirm that the blood of the prosecutrix was found on the pant and shirt of the Appellant.

18. Learned Counsel for the Appellant contended before us that Inayat Ali has framed his client. In fact, the prosecutrix was injured while she was being given a bath and there was no question of anybody raping her, much less the Appellant. It was submitted that even in the MLC, it is recorded that according to the prosecutrix "somebody" raped her and there is no mention of the Appellant.

19. We were not at all impressed with this contention. There is nothing to show that Inayat Ali had some prejudice against the Appellant, other than his bald allegation. There is also no Explanation why the Appellant should choose to bathe his stepdaughter in the middle of the night at 2.00 a.m. This action on the part of the Appellant is extremely unnatural and unconvincing. It may be mentioned that it was twice put to the Appellant that he had taken the prosecutrix near a water tap and given her a bath, but in his statement recorded u/s 313 of the Cr.P.C., the Appellant twice stated that that is incorrect. This shows the inconsistent stand of the Appellant.

20. As regards the submission that "somebody" (and not the Appellant) raped the prosecutrix, we are of the view that there is nothing to suggest that the prosecutrix did not name the Appellant at the time when the MLC was prepared. That document was prepared by a doctor who may or may not have found it necessary to mention the name of the alleged rapist, particularly since he is the stepfather of the prosecutrix. We cannot assume anything in this regard, one way or the other. Nothing turns on the failure of the doctor to mention the name of the Appellant in the MLC (for whatever reason) and surely this cannot prejudice the prosecutrix, who certainly had more important things on her mind than to ensure that the doctor records the name of her rapist.

21. It was submitted that Inayat Ali, who had some grudge against the Appellant, had tutored the prosecutrix. Again, we do not agree with this view canvassed by learned Counsel because there is no reason to suggest any enmity between Inayat Ali and the Appellant. In any event, it was Mohd. Farukh who had noticed the events and informed Inayat Ali. There is no reason suggested for Mohd. Farukh to frame the Appellant. On the contrary, all that Mohd. Farukh stated has been confirmed by the prosecutrix and Inayat Ali. Mohd. Farukh has been found to be a truthful witness who gave full details of what transpired from the time he saw the Appellant and the prosecutrix crossing the road.

22. Learned Counsel contended that the clothes of the prosecutrix had been washed with soap and so there was no question of identifying her blood group. For this reliance has been placed on the statement of the prosecutrix who says that her mother washed her clothes with soap. We are of the opinion that the evidence points to the fact that though the clothes of the prosecutrix were washed, it was not with soap. For one, PW-3, the mother of the prosecutrix denied that she had washed the clothes of the prosecutrix. She was confronted with her statement to the contrary recorded u/s 161 of the Cr.P.C., but even there it is not mentioned that she washed her clothes with soap. PW-5 Inayat Ali also mentions that the mother of the prosecutrix washed her clothes, but does not mention the use of any soap. Similarly, PW-12 Mohd. Farukh says that when he went to call the police, the mother of the prosecutrix washed her clothes (as told to him by the mother) but again there is no mention of the use of any soap. The statement of the prosecutrix that her clothes were washed by her mother with soap clearly stems from some misconception, and with the weight of other evidence in respect of the commission of the crime, this discrepancy pales into insignificance.

23. The main contention of learned Counsel for the Appellant was that the clothes of the Appellant, that is, his pant and shirt, did not actually bear any bloodstains but that bloodstains were planted on these two items so as to blame the Appellant. In this connection, learned Counsel for the Appellant has relied upon several factors. Firstly, in Exhibit PW-7/A, which contains a medical examination of the Appellant, the doctor has noted that no stains were present on the clothes. However, PW-13, SI R.N. Chaudhary who was the Investigating Officer stated that on 24th August, 1997 when he arrested the Appellant, he took him to the Jheel where the Appellant pointed out the place of occurrence. At that time, he noticed bloodstains on the lower part of the Appellant's shirt. This witness then took possession of the Appellant's clothes, that is, his pant and shirt vide Exhibit PW-8/B. The contention of learned Counsel was that while the doctor did not notice any bloodstains, the Investigating Officer did and since the intention was to plant evidence against the Appellant, this discrepancy has cropped up.

24. The second factor relied upon by learned Counsel is that PW-13 SI R.N. Chaudhary stated that he had deposited the above clothing in the malkhana along with the salwar of the prosecutrix and their blood samples. PW-14, HC Ram Charan stated in his testimony that PW-13, SI R.N. Chaudhary had deposited four pulandas (parcels) out of which two were sealed with the seal of SDN Hospital and two were unsealed. Learned Counsel pointed out that even though four pulandas were deposited in the malkhana, PW-15 HC Ramesh Kumar stated that case property consisting of five pulandas were sent to the FSL and in the report of the FSL (Exhibit PW-16/A) it is stated that they (FSL) had received five sealed cloth parcels.

25. The contention of learned Counsel in respect of the second factor was two-

fold. It was firstly contended that when four parcels were deposited in the malkhana, how is it that five parcels were sent to the FSL and secondly when two of the parcels were unsealed how is it that the FSL received all sealed parcels.

26. Prima facie, there does appear to be some discrepancy with regard to the stains on the clothes of the Appellant, but a closer examination of the evidence on record shows that the discrepancy is not necessarily with respect to the presence or absence of bloodstains. In so far as the noting of the doctor is concerned, he only states that he did not find any staining present on the cloth. It must be remembered that the Appellant's examination was pursuant to an allegation that he had raped somebody. The medical examination was, Therefore, directed towards his capability of performing sexual intercourse and that is why the doctor has noted that the Appellant's genitals were well developed, that there was no smegma present, no external injury mark was present and that the Appellant could perform sexual intercourse. Given the context of the inquiry, the doctor could well have been looking for semen stains and not bloodstains - we cannot say for sure. However, it does appear that he may not have necessarily been looking for bloodstains because the FSL has mentioned in its result of the analysis conducted that semen could not be detected on the pant and shirt of the Appellant. Consequently, a noting to the effect that no stains were present on the clothes of the Appellant does not necessarily lead to any conclusion that there were no bloodstains on his clothes, given the direction of the inquiry. However, this does not have any impact on the final decision of the case.

27. In so far as the question of the discrepancy with regard to 4 or 5 parcels that were deposited by PW-13 SI R.N. Chaudhary and sent by PW-15 HC Raj Kumar to the FSL, we find from the entries that were made in the malkhana register, Exhibit PW-14/A that Entry No. 2765 relates to four parcels while Entry No. 2768 relates to one parcel, making a total of five parcels all relating to the FIR filed in the present case. PW-14 HC Ram Charan stated in his examination-in-chief that PW-13 SI R.N. Chaudhary deposited four parcels against Entry No. 2765 on 24th August, 1997 and on 26th August, 1997 he deposited one parcel which was Entry No. 2768. Quite clearly, Therefore, there is no discrepancy in the number of parcels that were deposited by PW-13 SI R.N. Chaudhary and those sent by PW-15 HC Ramesh Kumar to the FSL. The confusion appears to have occurred because of the different dates of making the deposit.

28. With regard to the argument that two of the parcels were unsealed and they could very well be the planted pant and shirt of the Appellant, we again do not find any substance in this. Some dates are relevant in this context. The prosecutrix was raped on 23rd August, 1997 and the Appellant's pant and shirt were deposited in the malkhana on 24th August, 1997, which is within a day of the incident. Both the witnesses who were in charge of the malkhana, that is, PW-14, HC Ram Charan and PW-15 HC Ramesh Kumar stated that as long as the case property remained in their custody, it was not tampered with. None of these witnesses were cross-examined by the Appellant. There is nothing to show that

they knew the blood group of the prosecutrix so that they could sprinkle some AB group blood on the pant and shirt of the Appellant; nor is there anything to show that the pant and shirt of the Appellant were tampered with so that AB group blood could be planted on the clothes of the Appellant.

29. Exhibit PW-16/A shows that five parcels were sent to the FSL on 6th November, 1997. These five parcels included the pant and shirt of the Appellant and the salwar of the prosecutrix and they were received by the FSL on 21st November, 1997. The report of the FSL, Exhibit PW-16/B, prepared on 4th August, 1998 for the first time mentions that the pant and shirt of the Appellant as well as the salwar of the prosecutrix contained human blood samples of AB group. It is not the case of the Appellant that the Investigating Officer or anybody else knew, till the analysis of the samples was received, that the blood group of the prosecutrix was AB. The question, Therefore, of anybody planting AB group bloodstains on the pant and shirt of the Appellant does not arise. Consequently, we have no hesitation in rejecting this contention of learned Counsel for the Appellant.

30. There has, undoubtedly, been some delay in sending the pant and shirt of the Appellant to the FSL for examination and that has really given rise to the argument raised by learned Counsel. While we are not at all happy with the delay in sending the clothing for examination, we are of the view that the delay does not harm the cause of the prosecution. Even if we were to assume, for the sake of argument, that during this period the clothes were tampered with, that would not really matter in view of the testimony of the prosecutrix as well as the case law that has developed on the subject, and which we propose to discuss hereafter.

31. The final contention urged by learned Counsel was that only the sole testimony of the prosecutrix, herself a child, by itself was not adequate to nail the Appellant, particularly since her uncle had tutored her.

32. In so far as the aspect of tutoring the prosecutrix is concerned, we have already held that we are not impressed by this contention because there is nothing to show that the prosecutrix was in any manner influenced by her uncle to give false evidence and there is also nothing to show that Mohd. Farukh gave false evidence. More importantly, we note that the mother of the prosecutrix (wife of the Appellant) had herself turned hostile and if any tutoring of the prosecutrix had to be done, it would have been more natural for the mother to tutor the prosecutrix in favor of the Appellant rather than for the uncle to tutor her against the Appellant. There is no allegation that the mother of the prosecutrix had, in any manner, tutored her and, Therefore, we do not give any credence to the suggestion of learned Counsel for the Appellant.

33. The question of believing a prosecutrix even though she is a child witness and the sole witness, is no longer rest integra. There is adequate case law available in support of the proposition that a conviction can be based on the sole

testimony of the prosecutrix even if she is a child.

34. In *Vishnu @ Undrya Vs. State of Maharashtra*, , the Supreme Court has given an indication of the conditions prevailing in our society, which we need to keep in the back of our mind when examining the correctness or otherwise of the testimony of a prosecutrix in a rape case. This is what the Supreme Court has said-

In the traditional non-permissive bounds of society of India, no girl or woman of self-respect and dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardising her future prospect of getting married with a suitable match. Not only would she be sacrificing her future prospect of getting married and having family life, but also would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family circle.

35. In *State of M.P. Vs. Dayal Sahu*, , the Supreme Court considered the value of the evidence of a sole witness, namely, the prosecutrix. After discussing various earlier judgments rendered by the Court, namely, *State of Punjab Vs. Gurmit Singh and Others*, , *Sheikh Zakir Vs. State of Bihar*, , *Ranjit Hazarika Vs. State of Assam*, and *State of Rajasthan Vs. N.K.-The Accused*, , the Supreme Court observed that a conviction can be based on the sole testimony of the prosecutrix and corroboration is not required unless there are compelling reasons, depending on the given facts and circumstances of a case. The Supreme Court said:

A plethora of decisions by this Court as referred to above would show that once the statement of the prosecutrix inspires confidence and is accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence.

36. Similarly, in *State of Rajasthan Vs. Biram Lal*, , the Supreme Court held that if the sole testimony of the prosecutrix is free from blemish and implicitly reliable, then a conviction can be recorded on that basis. It was observed as follows:

It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In

appropriate cases, the court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction.

37. Finally, in *State of Rajasthan Vs. Om Prakash*, , the Supreme Court referred to *State of Maharashtra Vs. Chandraprakash Kewalchand Jain*, and observed that it is a well settled proposition that conviction for an offence u/s 376 of the IPC can be based on the sole testimony of the rape victim. A woman or a girl subjected to sexual assault is not an accomplice to a crime but a victim of another person's lust and it is improper and undesirable to test her evidence with a certain degree of suspicion, treating her as if she were an accomplice. It was further observed that the testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

38. Reference was also made to *State of Himichal Pradesh Vs. Gian Chand*, in which the Supreme Court observed that the Court has first to assess whether the evidence of the prosecutrix is trustworthy. If it is so, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined.

39. In *Gurmit Singh*, which is the leading judgment on the subject, the Supreme Court explained that corroboration of the testimony of a prosecutrix was not necessary and if implicit reliance cannot be placed on her testimony, then evidence that lends assurance to her testimony, short of corroboration, may be required - but not corroboration. This is what the Supreme Court said:

If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice.

Under the circumstances, we have no hesitation in holding that the sole testimony of the prosecutrix, even if she is a child, can be relied upon to maintain a conviction if her evidence is reliable and trustworthy.

40. In *Om Prakash*, the Supreme Court made a rather significant observation to the effect that cases involving sexual molestation and assault require a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws.

41. While elaborating on the sensitive approach that the Court must adopt in cases of this nature and the factors required to be considered, the Supreme Court stated as follows:

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more

obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted.

42. From a perusal of these decisions rendered by the Supreme Court, the following parameters and factors that need to be kept in mind, clearly emerge in cases of a rape of a girl child:

Such cases need to be dealt with sensitively and not like cases involving other penal offences. In other words, the whole approach of the Courts must be quite different.

The traditional non-permissive bounds of Indian society must be kept in mind while examining the evidence in cases involving sexual offences. Social factors play an important role in the nature and quality of available evidence.

The sole testimony of a prosecutrix is enough to convict a person accused of rape, if the testimony is free from blemish and implicitly reliable.

Such testimony does not need corroboration; but if there is some doubt about the implicit reliability of the testimony, then the court may look for assurance to the acceptability of the testimony, short of its corroboration.

If the testimony of the prosecutrix is reliable and trustworthy, then minor contradictions are not enough to throw out the evidence and other issues such as non-examination of an available witness, even the non-examination of a doctor or the non-production of the doctor's report would not be fatal to the case of the prosecution.

43. In the light of these principles, if we examine the testimony of the prosecutrix PW-9, we find no reason to disbelieve her. She has stated the facts without any embellishments or any padding. More importantly, she has given her version even though her mother had turned hostile. There is no doubt that the prosecutrix was bleeding from her private parts - a fact admitted by her mother also. There is also no doubt that the prosecutrix was in hospital for about 15 days - a fact stated by PW-12 Mohd. Farukh, an independent person and admitted by the mother of the prosecutrix. All this conclusively goes to show that the essential testimony of the prosecutrix is reliable. Moreover, the testimony of PW-12 Mohd. Farukh lends assurance, if not corroboration (though it is not needed) to the evidence given by the prosecutrix. Absence of any other evidence or any discrepancies that may show up, Therefore, pale into insignificance, and

in any case they do not knock out the basic substratum of her evidence. Consequently, we have no hesitation in confirming the conviction recorded by the learned Trial Judge. The prosecution has been able to prove beyond a reasonable doubt that the Appellant had committed the offence that he was charged with.

44. Before we part with this issue and discuss the aspect of sentence, we would like to make two observations. Firstly, it has repeatedly been held by the Supreme Court [see for example *Dinesh @ Buddha Vs. State of Rajasthan*, that the name of a rape victim should not be disclosed. Of course, if it is absolutely unavoidable as, for example, when framing the charge, the identity of the victim may be disclosed, but not otherwise. We find from the impugned judgment and order that the name of the prosecutrix has been mentioned on more than one occasion. This is not only contrary to the views expressed by the Supreme Court but also contrary to statutory law (see Section 228-A of the IPC). Sessions Judges would be well advised to ensure that when they are dealing with cases of sexual offences, the name of the victim should not be disclosed unless it is unavoidable.

45. Secondly, while going through the testimony of the prosecutrix, we find that she was put some rather strange, embarrassing and unwanted questions. The Trial Judges must appreciate that the purpose of cross-examining a victim of rape is not to humiliate her but to get to the truth of the matter. Consequently, questions which have no real relevance to the issues before the Court and which are apparently directed to cause discomfiture, if not humiliation, to a victim of sexual offences should not be permitted. Such questions do not serve the ends of justice and it is pointless allowing any such cross-examination to take place.

46. What is the sentence to be awarded to the Appellant? On the question of sentence, the legislature has given an extremely wide discretion. The sentence for the rape of a girl below the age of 12 years varies from imprisonment of 10 years to life imprisonment. This is indeed a very wide spectrum. We are of the view that it may be appropriate for the High Court to frame some non-mandatory guidelines so that discretion can be exercised on the basis of some relevant factors and parameters. The Supreme Court has said that both the criminal and the crime are important for the purposes of sentencing. [See *Bachan Singh Vs. State of Punjab*, The rape of a girl below the age of 12 years is, by all standards, a heinous crime and must be adequately punished depending on who the offender is. But, as mentioned above, the punishment can vary enormously from 10 years to life imprisonment and so how does one find out what is the appropriate sentence to be awarded in a given case. Add to this the possibility that the sentence can be reduced from the minimum of 10 years for special and adequate reasons.

47. Learned Counsel contended that the sentence in this appeal be reduced below the minimum because the Appellant is a first time offender. We find this to be a completely inadequate reason for reducing the sentence to below the statutory minimum of 10 years imprisonment. For coming to this conclusion, we

have taken guidance from some decisions of the Supreme Court. The Supreme Court has indicated what is not a special and adequate reason. For example, passage of time or that the criminal belongs to a rural area is not an adequate reason *State of Madhya Pradesh Vs. Munna Choubey and Another*, Similarly, if the criminal is a young and illiterate labourer are inadequate reasons *State of Madhya Pradesh Vs. Babbu Barkare @ Dalap Singh*, and *State of M.P. v. Bane Singh* (2005) 12 SCC 367]. If the criminal is an illiterate labourer from a rural area, that is also an inadequate reason [*State of M.P. v. Bhagwat* (2005) 11 SCC 141]. If the offence has been committed quite some time back (7 to 12 years ago) and the prosecutrix is married are both inadequate reasons [*Urmila (minor) v. Raju and Anr.* (2005) 12 SCC 366]. However, in *Ram Kumar v. State of Haryana* (2006) 4 SCC 347, the Supreme Court held that if the prosecutrix is married, then that is an adequate reason for reducing the sentence of the rapist.

48. What then is the punishment that is required to be given? As mentioned above, in the absence of any guidelines in this regard, we can only go by some recent precedents set by the Supreme Court. In *Dinesh @ Buddha Vs. State of Rajasthan*, where the victim was 8 years old, the Supreme Court awarded the minimum punishment of 10 years imprisonment. In *The State of Karnataka Vs. Krishnappa*, , the victim was again 8 years old and the Supreme Court awarded the minimum penalty of 10 years imprisonment. In *Bantu @ Naresh Giri Vs. State of M.P.*, , the victim was only 6 years old and the Supreme Court awarded the minimum sentence of 10 years imprisonment. Similarly, in *State of Madhya Pradesh Vs. Santosh Kumar*, the victim was 6 years of age and the Supreme Court awarded the minimum sentence of 10 years imprisonment.

49. In the present case, the victim is about 10 years old. Going by the past precedents set by the Supreme Court, we are of the view that it will be appropriate to reduce the sentence given by the Trial Court from life imprisonment to the minimum of 10 years rigorous imprisonment. Our exercise of discretion in this regard is based on the few judgments that we have mentioned above where the Supreme Court felt that the minimum of 10 years imprisonment was adequate.

50. With these observations, the appeal is dismissed with the modification in the substantive sentence of imprisonment mentioned above. However, the fine of Rs. 500/- imposed on the Appellant will remain. In default of payment of the fine, the Appellant will undergo rigorous imprisonment for a further period of four months, as awarded by the learned Trial Judge.