

State vs Anil Kumar S/O Prabhu Dayal on 25 April, 2011

IN THE COURT OF SH. RAMESH KUMAR - II,
ADDITIONAL SESSIONS JUDGE - 01 : North- East /
KARKARDOOMA COURTS: DELHI.

Case ID Number.	02402R0100202008
Sessions Case No.	05/2009
Assigned to Sessions.	24.03.2008
Arguments heard on	02.04.2011
Date of order.	08/04/11
FIR No.	518/2007
State Vs	Anil Kumar s/o Prabhu Dayal r/o A 700/2, Gali No.17, Adarsh Mohalla, Maujpur, Delhi.
Police Station	Bhajanpura
Under Section	376/506 IPC

25.04.2011

ORDER ON SENTENCE

Pre: Sh. Zenul Abedeen, Ld. APP for the state.

Convict produced from JC.

Sh. Harinath Ram, counsel for convict.

Since, matter was fixed for verification report from SHO, Police Station Bhajanpura, regarding the status of parents of convict. On previous date of hearing ld. counsel for convict had requested to take

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lenient view on the ground that parents of convict are old aged and his father has been under medical treatment for last three-four years and her mother's right also not working properly, if convict is awarded sentence to JC, then no one will left in his family to take care of them and they may not be survived further. Ld. counsel for convict further requests that convict may be released for the period already undergone.

On the other hand, ld. APP for the State objects against this

request on the point of law. Ld. APP for the State further submits that as convict has convicted heinous offence against the person and society and he requests to award maximum sentence against the convict.

Arguments heard.

After hearing the parties and keeping in view the facts and circumstances of this case and report from SH0, Police Station Bhajanpura, Delhi, it discloses that father of convict is under medical treatment for last three-four years and his mother Smt. Radha is also sick. About the family status of convict Anil Kumar is poor and all family members presently depend upon his mother Smt. Radha, who

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is maid. To this effect, SH0, Police Station Bhajanpura has also placed the statements of neighbours of this convict.

Since, it is true that convict has committed a crime against person and society for which he has been convicted. Further, it is also correct that convict belongs to a grass-root poor family and no other working male member is available in the family of convict, only his father who is under medical treatment and his mother whose one hand is also not working properly. In these circumstances, it appears to this court that case of convict comes under the category of special circumstances in which his parents cannot be allowed to die. Since, convict has been in JC for a period about three years and five months and he has not been involved in any other case except present one and is a person of very young age. As far as, position of law is concerned principal punishment is for a period of seven years which

may be extended for any further period. After taking into consideration the facts and circumstances of the present case and social background of convict, at this stage this court comes to the conclusion that since case of convict comes under special circumstances, hence this court presumes that it would be

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appropriate if the convict be released on period already undergone.

Accordingly, convict Anil Kumar be released for the period already undergone. No fine is imposed upon convict by taking into the consideration financial condition of convict.

In terms of directions of Hon'ble High Court of Delhi and section 437 -A Cr. P.C. convict Anil Kumar is directed to execute bail bond in sum of Rs.20,000/- with one surety in the like amount for the period of six months. File be consigned to record room.

ANNOUNCED IN THE OPEN
COURT ON THIS 25.04.2011 (RAMESH KUMAR-II)
ADDL. SESSIONS JUDGE-01/NORTH EAST
KARKARDOOMA COURTS: DELHI

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State Vs	1. Anil Kumar s/o Prabhu Dayal r/o A 700/2, Gali No.17, Adarsh Mohalla, Maujpur, Delhi.

Police Station
Under Section

Bhajanpura
376/506 IPC

JUDGEMENT

1. Station House Officer of Police Station Bhajanpura had filed a challan vide FIR no. 518/2007 dated 30.11.2007 u/s 376/506 IPC for the prosecution of accused in the court of Ld. Metropolitan Magistrate and Ld. MM after compliance of section 207 Cr. P.C. committed this case for trial before this court. Keeping in view of section 228 (A) IPC and directions of Supreme court in "State of Karnataka Vs. Puttraj 2004 (1) SCC 475" and "Om Prakash Vs. State Vs. Anil Kumar State of U.P. 2006, CRLJ. 2913", the name of prosecutrix not being given in the judgment.

2. In brief, facts of the case are that on 29.11.2007 a DD No.21A mark 'X' was recorded at PS Bhajanpura regarding rape upon a girl and she has been admitted in the hospital by her brother and same DD was marked to ASI Raj Pal Singh. On receipt of said DD ASI Raj Pal Singh along with Ct. Kamal reached at GTB Hospital and collected MLC of prosecutrix and ASI Raj Pal Singh has recorded statement of prosecutrix Ex.PW4/A and made endorsement upon the same vide Ex.PW6/A for registration of FIR u/s 376/506 IPC. Accordingly, during the course of investigation police arrested accused Anil Kumar and filed the challan u/s 376/506 IPC in the court of Ld. MM.

3. On the basis of material available on record ld. predecessor of this court framed a charges vide order dated 05.09.2008 against accused Anil Kumar for the offences punishable u/s 376/506 IPC to which accused did not plead guilty and claimed trial. State Vs. Anil Kumar

4. In order to prove its case prosecution has examined 14 witnesses namely PW1 ASI Daya Ram, PW2 Dr. Phukan, PW3 Dr. Dharam, PW4 Prosecutrix, PW5 Fakan Sharma, father of prosecutrix, PW6 ASI Raj Pal Singh, IO, PW7 Shamboo Sharma, hostile witness PW8 Tarawati, PW9 Ct. Jagbir, PW10 Ct. Kamal Singh, PW11 Suresh Babu, PW12 SI Krishan Dutt, PW13 HC Abhey Pal Singh and PW14 Dr. Shuchi Bhatt.

5. PW1 ASI Daya Ram is a formal witness being Duty Officer. This witness has recorded FIR No.518/2007 u/s 376/506 IPC Ex.PW1/A on the basis of tehrir Ex.PW1/B brought by Ct. Kamal.

6. PW2 Dr. Phukan, CMO, GTB Hospital, Delhi. This witness has proved the MLC of accused Anil Kumar Ex.PW2/1.

7. PW3 Dr. Dharam, Sr. Resident (Obst. & Gynae), GTB Hospital, Delhi. This witness has proved the MLC of prosecutrix Ex.PW3/1. This witness has deposed that on her examination vitals were found stable and on local examination, her hymen was found torn and State Vs. Anil Kumar there was no injury mark. This witness has further deposed that bone X-Ray of the patient was suggesting the age of less than 11 years.

8. PW4 Prosecutrix is a material witness being victim/complainant. From oral examination this court found that her state of mind appears to be of immature understanding and not capable to

discriminate between the different kinds of objects properly. In view of this, her statement was recorded without oath as she appears to be about 10 or 11 years old. This witness has deposed that accused Anil used to reside in her neighbourhood in Delhi and she used to reside in Delhi along with her brothers, bhabhi and her father and her mother is residing in village. This witness has further deposed that it was night time and she was sleeping in her house, accused entered into her house and thereafter, he took her to his house. This witness has further deposed that he removed her underwear and he also removed his underwear. This witness has further deposed that thereafter, he put his penis inside my private parts and when she cried he put his hand on her mouth. Thereafter, he left her. This witness has further deposed that she had narrated State Vs. Anil Kumar the incident to her bhabhi namely Tarawati. This witness has further deposed that accused used to take her to his house in the night hours for about 6-7 days continuously and used to repeat the aforesaid incident during these days. This witness has further deposed that she reported the incident to her bhabhi, she took her to hospital and she was examined there and police also reached in the hospital and noted down the incident told by her. This witness was cross examined by Ld. APP for the state as this witness was unable to tell certain material facts due to her immature understanding. In her cross examination by Ld. APP for the State, this witness admits that accused did not do Galat Kaam with her regularly and he used to take her to his house occasionally and not regularly.

9. This witness was also cross examined by Ld. Defence counsel at length. In her cross examination, this witness admits that accused Anil Kumar is brother in relation as he is son of her distant Phoofa and she know the accused Anil for the last 3-4 years. This witness further deposed that they used to bold the room but accused used to open the door by entering his hand through window. This witness further deposed that he had cried when the accused lifted her while State Vs. Anil Kumar sleeping from her room but her father and brother could not awoken. This witness in her cross examination admits that she had reported the incident as told by her bhabhi.

10. PW5 Sh. Faken Sharma is the father of prosecutrix. This is a hearsay witness. This witness came to know about the incident when Tarawati took Suman to hospital and Tarawati told him that accused Anil had committed 'galat kaam' with her daughter when he returned from his job at home. This witness has further deposed that he do not know the date of birth of her daughter. In his cross examination by Ld. Defence counsel this witness has deposed that he do not have any documentary proof of prosecutrix pertaining to her school and her admission.

11. PW6 ASI Raj Pal Singh is a material witness being the IO of this case. This witness has deposed that on receipt of DD No.21A mark X he along with Ct. Kamal reached at GTB Hospital and collected MLC of prosecutrix. There this witness has recorded statement of prosecutrix Ex.PW4/A and made endorsement upon the same vide Ex.PW6/a for registration of FIR u/s 376/506 IPC and rukka was State Vs. Anil Kumar sent through Ct. Kamal for registration of FIR at PS Bhajanpura. This witness has inspected the spot and prepared site plan Ex.PW6/C at the instance of prosecutrix. This witness apprehended accused at the instance of prosecutrix and arrested him vide arrest memo Ex.PW6/D and his personal search was conducted vide Personal Search Memo Ex.PW6/E and accused was got medically examined by him at GTB Hospital. This witness after his medical examination collected exhibits from the hospital vide seizure memo Ex.PW6/F. This witness had deposited the case property in malkhana. This witness sent the exhibits at CFSL, Kolkata through Ct. Jagveer. This

witness has collected the CFSL result from the malkhana and deposited the same in the court. In his cross examination by Ld. Defence counsel, this witness admits that the present case was registered on the statement of prosecutrix and prosecutrix was not examined under section 164 Cr.P.C. This witness has further deposed that no documentary proof regarding date of birth of prosecutrix was found with her parents and he got bone age X-Ray of prosecutrix conducted at GTB Hospital. This witness denied that he got present case registered falsely against the accused in connivance of PW Tarawati and parents of prosecutrix. State Vs. Anil Kumar This witness further deposed in his cross examination that PW Tarawati did not report the matter of cycle theft prior to this incident nor during the course of investigation this fact came into his knowledge.

12.PW7 Shamboo Sharma. This witness is a hearsay witness. This witness has been declared hostile by Ld. APP for the state.

13.PW8 Tarawati. This witness has deposed that prosecutrix aged about 11 years who was her Nanad in relation informed her that accused Anil had committed rape with her for about ten times within a period of two months after taking her from the room in the night hours and prosecutrix has also told her that accused used to threatened her not to disclose about the said incident to anybody. This witness has further deposed that accused has also used to tease the mother of prosecutrix namely Sudama as she had informed her. This witness has further deposed that the said incident was reported by her to her husband as well as to the parents of prosecutrix. This witness took the prosecutrix along with her father to the hospital for her medical check up and police was also informed from the State Vs. Anil Kumar hospital. This witness has been cross examined by Ld. Defence counsel at length.

14.PW9 Ct. Jagbir Singh. This witness had deposited the two sealed pullandas with the seal of GTB Hospital along with CFSL form at CFSL, Kolkata vide RC No.51/21 on 23.01.2008.

15.PW10 Ct. Kamal Singh. This witness has accompanied the IO during the investigation. Accused was arrested in his presence and his medical examination was also got conducted from GTB Hospital by this witness.

16.PW11 Suresh Babu. This witness has proved his detailed biological report vide Ex.PW6/G.

17.PW12 SI Krishan Dutt is formal witness being duty officer. This witness has recorded DD No.21 A mark X on a telephonic call from GTB Hospital through Ct. Satpal.

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18.PW13 HC Abhey Pal Singh. This witness has deposed that on 30.11.2007 ASI Raj Pal Singh had deposited with him two sealed pullandas and two sample seals and he made entry in the register No.19 at serial No.2218 and same is Ex.PW13/A. This witness has further deposed that on 20.01.2008 parcels were sent to CFSL, Kolkata through Ct. Jagdeep vide RC No.51/21/2008.

19.PW14 Dr. Shuchi Bhatt, Radiologist, GTB Hospital, Shahdara, Delhi. This witness has proved the X-Ray report Ex.PW14/A on behalf of Dr. Deep Shikha, Radiologist and as per X-Ray report findings age of prosecutrix has been opined less than 11 years.

20.After prosecution evidence, statement of accused persons u/s 313 Cr.P.C. was recorded where accused Anil Kumar denied all these evidence and circumstances put to him. In statement u/s 313 Cr.P.C. accused Anil Kumar deposed that he had not committed any offence and he has been implicated falsely as there was dispute on amount regarding of bicycle. He further deposed that he had taken the bicycle with the consent of parents of prosecutrix and after using this he had returned the same and this facts was told to State Vs. Anil Kumar them but after some time this bicycle was stolen by someone for which he was forced to pay and he paid according to demand of parents of prosecutrix but later on they demanded more which he refused and on his refusal he was implicated in this case.

21.Thereafter, accused Anil Kumar had led the evidence of defence witness in his defence. Ms. Rajni was examined as DW1 as defence witness and she had deposed that on the day of incident accused Anil was on his night shift duty and she had not seen accused even talking with prosecutrix. This witness has further deposed that she has also not seen any eve teasing with prosecutrix by the accused. This witness has further deposed that there was a dispute of bicycle between parents of the prosecutrix and accused for which the parents of prosecutrix demanded money which the accused paid but later on parents of the prosecutrix raised fresh demand in between this time present case was registered.

22.After recording of defence evidence, case was fixed for final arguments.

State Vs. Anil Kumar ARGUMENTS

23.Ld. APP for state, Sh. Zenual Abedeen argued that accused Anil Kumar had enticed the prosecutrix with intention to commit rape upon her and in this regard a complaint was made by prosecutrix to the police. Accordingly, case under section 376/506 IPC was registered against accused Anil Kumar. Ld. APP for state submits that prosecutrix was taken by the accused Anil Kumar without the consent of the guardian of prosecutrix and according to medical report accused Anil Kumar had committed rape upon the prosecutrix hence, he has committed the offence punishable 376. IPC. Ld. APP for state relies upon the statement of prosecutrix wherein the prosecutrix has stated that accused had committed rape upon her without her consent and extend threat not to disclose the fact of this case otherwise he would kill her. Further, Ld. APP rely his case on the statement of PW Tarawati, neighbour of prosecutrix. Ld. APP submits that since the statement of prosecutrix and statement of Tarawati support the case of prosecution, therefore, the present case is squarely covered under the ingredients of 376 & 506 IPC as the statement of prosecutrix before the court is sufficient to State Vs. Anil Kumar convict the accused for offence charged as prosecution has proved its case beyond reasonable doubt.

24.On the other hand ld. Counsel for accused argued that case was registered on 29.11.2007 whereas date of incident is 19.11.2007 which clearly shows 10 days delay, so there is longer delay in lodging

the FIR. Ld. Counsel for accused further argued that as per statement of prosecutrix u/s 161 & site plan, first floor is the resident of prosecutrix. Ld. Counsel further argued that age of the prosecutrix is 11 years.

25.Ld. counsel for accused further submits that the case is false and wholly immaterial and there is no eye witness and independent witness for the incident. Ld. Counsel for accused further argued that no medical opinion has been given regarding the age of prosecutrix, only suggestive opinion are there. No medical board has given opinion on the point of age of prosecutrix. Date of occurrence of incident is 01.10.2007 and FIR registered on 30.11.2007 and there is no explanation to delay in lodging FIR and delay in lodging FIR create doubt on the case of prosecution. State Vs. Anil Kumar

26.Ld. counsel for accused has relied upon citation 'Chhagan Dame Vs. The State of Gujarat, AIR 1994 Supreme Court 454', where it has held that :

"Evidence of child witness ☐ Child witness under influence of tutoring ☐ Not safe to rely upon their evidence."

27.Further, Ld. Counsel for accused has relied upon citation "Abbas Ahmad Choudhary Vs. State of Assam, 2010 CRI. L.J. 2060", wherein it has held that :

"Testimony of prosecutrix ☐ Though entitled to primary consideration ☐ Principle that prosecution has to prove its case beyond reasonable doubt applies ☐ There can be no presumption that a prosecutrix would always tell entire story truthfully."

28.Ld. counsel for accused has also relied upon citation "Mohammed Farooq Abdul Rauf Vs. State of Maharashtra, 2010 CRI. L.J. 1468" wherein it has held that :

"Penal Code (45 of 1860), S. 376 (2) (f) ☐ Rape ☐ Victim minor girl ☐ Mother of victim admitting previous dispute between her family and accused ☐ Incident allegedly occurred in afternoon, however, prosecutrix and her mother admitting in her cross examination that prosecutrix attended school from 10 a.m. To 5.30 p.m. On day of incident ☐ Prosecutrix State Vs. Anil Kumar also admitting in her cross ☐ examination that her parents had beaten her when she had not deposed about incident on previous date ☐ Indicating that prosecutrix was tutored witness ☐ Non examination of alleged eye ☐ witnesses ☐ Though hymen of prosecutrix was torn no other injuries found on her person ☐ Doctor examining prosecutrix admitting that hymen may be torn by any other reason ☐ Probability of false accusation cannot be ruled out ☐ Evidence of prosecutrix and her mother not inspiring confidence ☐ Accused entitled to acquittal".

29.Ld. counsel for accused has further relied upon citation "Yerumalla Latchaiah Vs. State of A.P., (2006) 9 Supreme Court Cases 713, wherein it has held that :

"Penal Code, 1860 S. 376 Rape Evidence Medical evidence inconsistent with evidence of prosecutrix Prosecutrix aged 8 years at the time of the alleged occurrence According to evidence of the doctor who examined the prosecutrix immediately after the occurrence, there was no sign of rape Thus evidence of prosecutrix belied by medical evidence Held, accused Appellant entitled to acquittal."

30.Ld. counsel for accused also relied upon citation "Kartikeshwar alias Kartik Vs. State of Madhya Pradesh, 2011 CRI. L.J. (NOC) 16 (CHH.)", wherein it has held that :

State Vs. Anil Kumar "Penal Code (45 of 1860), S. 376 Rape Proof Accused allegedly took prosecutrix, a maid servant to another room and forcibly raped her - Contradictions and omissions in statement of prosecutrix not inspiring confidence Inordinate delay of two months in lodging FIR not satisfactorily explained There was some dispute between two families, therefore, possibility of false implication of accused cannot be ruled out

- Order convicting accused - Liable to set aside."

31.Ld. counsel for accused has also relied upon citation "Babu Dey Vs. State of West Bengal, 2000 CRI. L.J. 329", wherein it has held that:

"Penal Code (45 of 1860), S. 376 - Rape - Proof Prosecutrix alleging that accused clandestinely entered into her house in absence of her husband and committed forcible intercourse - Nothing to show that prosecutrix raised any hue and cry - Her version not supported by landlady and other neighbours No sign of forcible intercourse noticed during medical examination - Delay in lodging FIR not explained Accused entitled to acquittal."

32.Ld. counsel for accused also relied upon citation of Hon'ble Supreme court in case "Kuldeep K. Mahato Vs. State of Bihar, 1998 CRI. L.J. 4033", wherein it has held that :

State Vs. Anil Kumar "Penal Code (45 of 1860), S. 375 Rape Proof Accused alleged to have kidnapped prosecutrix and committed rape on her - Concurrent finding that prosecutrix was below 18 years of age Medical evidence showing no injuries on person of prosecutrix including her private parts Conduct of prosecutrix showing that she was consenting party to sexual intercourse Not a case of prosecutrix that she was put in physical restraint Conviction of accused for offence of rape, not proper."

33.On these grounds, ld. Counsel for accused has prayed for acquittal of accused.

34.Arguments heard. Record perused. On perusal of record it is revealed that present case was registered on the statement of PW4 prosecutrix wherein allegation has been made against accused Anil Kumar for committing rape upon her. In her statement dated 30.11.2007, she states that

accused Anil Kumar resides in a room adjoining to her room. She has further deposed that in summer season when she was sleeping in her house, accused entered into her house and thereafter took her along with him to his house and committed 'galat kaam' with her. She had further deposed in her statement that accused had committed rape upon her several times. Gwalior. Medical evidence of prosecutrix also does not show any State Vs. Anil Kumar physical injury on her person neither on her private part but her hymen was found torn.

35. On perusal it is further revealed that age of prosecutrix was stated to be 11 years on the date of commission of offence but in this regard no documentary proof has been placed on record except bone X-Ray. Further PW5 father of prosecutrix was not able to disclose age of prosecutrix.

36. On perusal of record it is further revealed that medical examination of prosecutrix Ex.PW3/1 which shows no external marks of injury upon prosecutrix. In cross examination by Ld. Defence counsel, PW3 Dr. Dharam had deposed that hymen of a 11 years old girl can not be torn while playing games/sports. He had further deposed that it is possible only by injury to hymen as he found the hymen of the patient to be completely torn.

37. Further, it is revealed that PW14 Dr. Shuchi Bhatt, Radiologist has proved bone age X-Ray Report of prosecutrix Ex.PW14/A and opined the age of prosecutrix less than 11 years on basis of report State Vs. Anil Kumar findings.

38. On perusal of record it is revealed that FSL report Ex.PW6/G shows that on examination blood was detected on Ex. No.1 and semen could not be detected on Ex. No.2. as Ex. No.2 negative for semen test, serological examination of No.1 was not carried out.

39. For the purpose of offence of rape it would be relevant to discuss the definition of rape has been given under section 375 IPC. Section 375 IPC is being reproduced as under: "375. Rape - A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: First. Against her will.

Secondly. Without her consent.

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

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

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

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

Explanation. □ Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Explanation. □ Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." Section 376 IPC which is reproduced hereunder:

Section 376 IPC:

Punishment for rape - (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever, □

(a) being a police officer commits rape □

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant State Vs. Anil Kumar subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution' or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) Commits rape on a woman when she is under twelve years of age; or

(g) Commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 - Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3 "Hospital" means the precincts of the hospital and includes the precincts of any institution for a State Vs. Anil Kumar reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

40. It is also very important to look into the observations made in the judgment '2009 III AD (Cr.) DHC 219 CRL. APP. 294/1999 Karan Singh Vs. State' wherein the following observation was made:

"17. Having gone through the records of this case and the law on the subject, I have no hesitation but to hold that in the present case the testimony of the prosecutrix alone was sufficient to bring home the guilt and to prove the charges of rape against the appellant.

18. As regards the submissions made by learned Amicus Curiae that being no injuries were found on her private parts, reference can be made to the judgment delivered in case of 'B C Deva Vs State of Karnataka 2007 VII AD (S.C.) 143 = 2007 12 SCC 122', where it has been held that merely because no injury was found on the private parts of the prosecutrix would not negate her testimony about the rape committed on her.

"18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the State Vs. Anil Kumar gynecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the

absence of any corroboration of medical evidence the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted."

41. It is also very important to look into the observations made by Hon'ble Apex Court in judgment '(1993) 2 Supreme Court Cases

- State of Himachal Pradesh Vs Raghubir Singh':

"There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record....."

In judgment titled as 'Suresh Kumar v. State of Haryana, (P&H) 2004(4) R.C.R.(Criminal) 204 : 2004(4) AICLR 574, PUNJAB AND HARYANA HIGH COURT observed that:

"14□15 . After hearing the rival contentions of both State Vs. Anil Kumar sides and rescanning the entire evidence minutely, I am of the considered view that the prosecution has been able to bring home guilt to both the appellants to the hilt. My reasoning is set down as under :□Much has been said on age of the prosecutrix by learned counsel for the appellants. No doubt, when the prosecutrix stepped into the witness box, she stated her date of birth as 11□2□1980. The oral statement of the prosecutrix loses its effect in the light of the statement of Smt. Pushpa Devi, Head Teacheress, who has categorically deposed that the date of birth of the prosecutrix in the school record is 5.3.1981. Ex.PK is the certificate in this regard. No doubt, she has stated that she had brought the application which was made at the time of admission of the prosecutrix but that fact by itself would not make much difference. The certificate Ex.PK has been issued by a Government Official in the discharge of his official duty and there is no reason to disbelieve the same on account of presumption attached to it under Section 35 read with Section 114

(e) of the Indian Evidence Act. Baldev Singh Malik, Statistical Assistant, General Hospital, Adampur (PW□10) has deposed that the birth register of police station City Hansi for the year 1980□81 was not available in the record of Chief Medical Officer, Hisar. Although no entry regarding date of birth of the prosecutrix from the office of Registrar Births and Deaths has been produced in this case yet the school record produced in this case clearly indicates that her age was less than 16 years on the date of occurrence.

In *Umesh Chandra v. State of Rajasthan*, 1982 SCC (Cr.) 36, their Lordships of the Hon'ble Apex Court have held that the entries in the school register and admission forms regarding the date of birth constitute good proof of age and where these entries are ante-mortem, there was no reason to disbelieve them. In the instant case, it is not disputed that the certificate Ex.PK relates to the prosecutrix. There is no suggestion from the side of the appellants to the contrary. The fact remains that the prosecutrix was State Vs. Anil Kumar got admitted in the school on 2.4.1987 when her date of birth was recorded as 5.3.1981 as is evident from the statement of Smt. Pushpa Devi, Head Teacheress (PW-3). A stray statement given by the prosecutrix, who was hardly of the age of 14 years, takes us no where. Even otherwise, she states that she was born in 1980. The occurrence is of May, 1994. In that eventuality also, she can be considered to be less than 16 years of age at the time of occurrence. No doubt, as per ossification test, her age was between 15 to 16 1/2 years, but in my considered view, there is no reason to disbelieve the school certificate Ex.PK. In *Bhoop Ram v. State of Uttar Pradesh*, 1989 SCC (Cr.) 486 : 1989(1) RCR(Cr.) 573 (SC), the Hon'ble Apex Court has reiterated that the entries in the school certificate cannot be rejected on the basis of surmises that usually parents understate the age of their children at the time of admission to school. In other authoritative judgments, the Hon'ble Apex Court has also held that the evidence of the doctor regarding age as occurs in the ossification test can be said to be an opinion based on estimate and there can be every possibility of error creeping into the said opinion."

18. She has also stated in her statement Ex.PM that blood started oozing out and her clothes got smeared with blood but the appellants had got her clothes washed. The learned counsel for the appellants has also made an attempt to demolish the case of the prosecutrix in the light of the medical evidence where no bleeding per vagina was noticed by the lady Dr. Urmil Dhatarwal. However, the medical evidence and the report of the Forensic Science Laboratory establish that the rape has been committed upon her. On the basis of condition of hymen, Dr. Urmil Dhatarwal (PW1) had initially stated that the possibility of the intercourse could not be ruled out, but at the same time it has come in her evidence that confirmatory report would be given after perusing the Chemical Examiner's report of posterior vaginal swab. After perusing the said report, she found that State Vs. Anil Kumar human semen on salwar and posterior vaginal swab showed that intercourse had taken place. Non-detection of blood on the clothes would be of no consequence as for constituting the offence of rape as only penetration is sufficient. No doubt, there is no injury noted by the doctor on the person of the prosecutrix, yet this fact again would not demolish the statement of the prosecutrix. Absence of injury on the person of prosecutrix is not necessarily an evidence of falsity of allegation as held in *State of Rajasthan v. N.K. The Accused*, 2000(2) RCR(Cr.) 471 (SC). In the light of the evidence discussed above, there is nothing to disbelieve the statement of the prosecutrix made before the Sub-Divisional Judicial Magistrate on 27.5.1994.

Again the observation made in AIR 1996 Supreme Court 1393 (1) that:

".....It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex of crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim.

A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal in nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecution inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason State Vs. Anil Kumar 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. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

In another case of S. Ramakrishna Vs. The State 2008 (11) JT 635, the Apex Court while delivering this judgment also observed:

"10. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (In short "the Evidence Act") nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence "

42. In the present case neither dispute of money nor issue of bicycle has been admitted by prosecutrix or by her father and facts of medical evidence are consistent with evidence of prosecutrix and other witnesses. As prosecutrix has stated in her examination that accused had lifted her from her room and committed 'galat kaam' with her without her consent. Since fact of taking out the prosecutrix without the consent of her parents has been proved. In any case it may be presumed that prosecutrix being the minor and State Vs. Anil Kumar belongs to a poor family due to fear she might not have told this fact to her father and when this fact disclosed matter was reported to police.

43. Since the present case was registered on the statement of prosecutrix and in her examination before the court prosecutrix had stated to be age of 11 years old and bone age X-Ray report also shows her age less than 11 years and she had further deposed that accused had committed rape upon her without her consent. Even medical reports show that accused had committed intercourse with prosecutrix 5-6 times and hymen of prosecutrix was found torn. Since, the age of prosecutrix is less than 11 years as per bone age X-Ray report Ex.PW14/A and statement of prosecutrix is corroborated with medical evidence and evidences of other witnesses. In these circumstances non examination of prosecutrix u/s 164 Cr. P.C. does hardly any matter. Hence, this court does not find any ground to discard their testimonies.

44. Further, the facts of judgments placed by Ld. Counsel for accused are not disputed but these are not applicable to the facts of the State Vs. Anil Kumar present case and this court is not satisfied with the arguments of ld. Counsel for accused.

45. Facts and circumstances available on record indicate guilt towards the accused and none else. After considering the facts and circumstances of this case, this court has come to conclusion that prosecution has proved its charges u/s 376/506 IPC against accused Anil Kumar beyond reasonable doubt. Accordingly, this court convict accused Anil Kumar for the offence u/s 376/506 IPC. ANNOUNCED IN THE OPEN COURT ON THIS 08.04.2011 (RAMESH KUMAR J) ADDL. SESSIONS JUDGE/1/NORTH EAST KARKARDOOMA COURTS: DELHI State Vs. Anil Kumar State Vs. Anil Kumar