State Of Himachal Pradesh vs Sanjay Kumar Alias Sunny on 15 December, 2016

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Bench: Abhay Manohar Sapre, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1231 OF 2016
(ARISING OUT OF SLP (CRL.) NO. 5575 OF 2015)

STATE OF HIMACHAL PRADESH	.....APPELLANT(S)	
VERSUS		
SANJAY KUMAR @ SUNNY	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

Since the matter was fixed for final disposal, counsel for both the parties were heard in detail.

It is a case where the respondent herein was charged for having committed an offence punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (for short, 'IPC'). After trial, the Additional Sessions Judge, Fast Track Court, Chamba, Himachal Pradesh, convicted the respondent

under Section 376(2)(f) as well as under Section 506 of the IPC.

The respondent challenged the order by preferring the appeal before the High Court in which he succeeded as the High Court, after revisiting the issue, has come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt. According to it there existed certain circumstances which created reasonable doubt in the version of the prosecution. It has resulted in setting aside the conviction recorded by the trial court thereby acquitting the respondent. This judgment of the High Court is assailed in these proceedings.

In the impugned judgment, the High Court has taken note of the prosecution case. As there is no dispute that the said version is correctly recorded by the High Court, we reproduce the same from the said judgment.

As per the prosecution, the prosecutrix, who, at the relevant time, was nine years old, used to reside at Dalhousie with her parents. She was studying in VII Standard in Moti Ka Tibba school in Dalhousie. Her native place is Aruwan. Her grandparents had been living in joint family at Aruwan. Somewhere in the month of December 2009, during winter vacation, prosecutrix visited the place of her grandparents. She had been taken there by her mother Babli (PW-1). While at the place of her grandparents, the prosecutrix was playing with her younger brother. The respondent called her to the room on the first floor. She responded to the call of the accused. On reaching the room, the respondent bolted the door from inside and made the prosecutrix lie on the bed. Her mouth was gagged. The respondent stripped off salwar of the prosecutrix of her one leg. He put off his trousers. Thereafter, he laid on the prosecutrix and thrust his penis inside her vagina. She fell unconscious. When she regained consciousness, the prosecutrix found no one in the room. The respondent also criminally intimidated the prosecutrix not to disclose this act to anyone, otherwise she would be killed. After 10-15 days again, the respondent took the prosecutrix to the same room and committed sexual intercourse with her. Thereafter, the prosecutrix returned to Dalhousie. Again, after two months, the prosecutrix visited her grandparents on seven days vacation. During this period also, the respondent took her forcibly to his own room where he had sexual intercourse with her and once again criminally intimidated her not to disclose the act to anyone. After a lapse of 2-3 months again, the prosecutrix visited her grandparents and the respondent yet again called her to which she did not respond and slipped away. Prior to September 2012, the prosecutrix started complaining of stomach ache and was given medicine by the local doctor. PW-1 took her for treatment at Kakira Hospital on September 03, 2012. She was medically checked up by Dr. Jasbir Kaur (PW-8). She told the mother of the prosecutrix that her daughter might have been sexually assaulted 2-3 years back. PW-1 enquired from the prosecutrix as to what happened with her 2-3 years back. The prosecutrix then told her mother about the respondent committing sexual intercourse with her three times when she was at her grandparents place at village Aruwan. PW-1 shared this incident with her husband. They went to the Police Station and lodged complaint (Exhibit PW- 1/A) on September 06, 2012 before the Deputy Superintendent of Police, Dalhousie, who forwarded the same to the Station House Officer, Police Station, Kihar with endorsement (Exhibit PW-12/A) along with OPD Slip (Exhibit PW-8/A). The prosecutrix was sent for medical examination to Regional Hospital, Chamba. Dr. Arti Sharma (PW-9) and Dr. Richa Gupta medically examined the prosecutrix and issued MLC (Exhibit PW-9/B). Thereafter, date of birth of the prosecutrix was obtained; the respondent was

arrested; and he was also medically examined. After completion of investigation, challan was put up in the Court after completing all the codal formalities.

Prosecution examined as many as twelve witnesses in all to prove its case against the respondent. Statement of the respondent under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was also recorded wherein he pleaded innocence. According to the respondent, a false case has been made out against him due to personal enmity in the family. The Additional Sessions Judge, Fast Track Court, Chamba convicted and sentenced the respondent, which has been set aside by the High Court, as noted above.

Though the prosecution examined twelve witnesses, it may not be necessary to state the deposition of all those witnesses. The material witnesses are PW-1 (mother of the prosecutrix), PW-2 (prosecutrix herself), PW-8 (Dr. Jasbir Kaur, who had examined the prosecutrix on September 03, 2012), and PW-9 (Dr. Arti Sharma, who had examined the prosecutrix after the FIR was lodged).

PW-1, who is the mother of the prosecutrix, got married thirteen years back with Mohinder Singh. Her daughter was twelve years old and son was nine years old. Her daughter was studying in VII Standard in Moti Tibba High School, Dalhousie. Her daughter used to complain of having stomach ache for the past 2-3 months and was taken to the local doctor, who gave her medicine. The prosecutrix was then taken for treatment to Kakira Hospital on September 03, 2012 where PW-8 examined her and told PW-1 that the prosecutrix might have been sexually assaulted 2-3 years back. The prosecutrix was given medicine for 10-15 days. On returning home, she enquired from her daughter as to what had happened with her 2-3 years back. Her daughter told that the respondent had sexual intercourse with her three years back when she was away at her grandparents place. The respondent was real brother of her husband and uncle of her daughter. Her daughter narrated that three years back when she was with her grandparents at Aruwan, the respondent came and called her to the room. Her daughter, being niece of accused, responded to his call and went to the room. Thereafter, the respondent bolted the door from inside and committed sexual intercourse with her daughter after putting off her clothes. Her daughter told that the respondent had gagged her mouth when started weeping. The respondent had criminally intimidated her daughter not to disclose this to anyone. Her daughter also told that the respondent had committed sexual intercourse with her three times. PW-1 then shared this incident with her husband. They went to the Police Station to lodge complaint (Exhibit PW- 1/A). In her cross-examination, PW-1 has deposed that her husband had not accompanied her to the Hospital at Kakira. He stayed at home since he was employed as Chowkidar in the local building. On the next day, PW-1 shared this incident with her husband. Her father-in-law was having joint family with his two brothers. All of them resided together in the same house. There were ten rooms in the house of her in-laws consisting six rooms on the ground floor and another four rooms on the first floor. Property of her father-in-law was joint with his brother. She was not aware whether there was a brawl on May 28, 2012 between her father-in-law and the father of the respondent. She was not aware whether the matter went to the Police and the proceedings were still pending before the Sub-Divisional Magistrate, Churah. She has admitted in her cross-examination that there were 20-25 persons in the joint family of her in-laws, who resided together in the same house at Aruwan. Her mother-in-law also resided on the ground floor. All the rooms on the ground floor were occupied by other family members. She had brought her children

after two months when they had gone to avail winter vacation in the month of December 2009.

Statement of the prosecutrix (PW-2) was recorded in-camera. The trial court, after putting five questions to her, was satisfied that she was a competent witness. According to her, her native place is Aruwan. Her grandparents were residing there in a joint family. Three years back, during winter vacation, she was at the place of her grandparents. Her mother had taken her. She was playing with her younger brother and younger cousin when the respondent, who is her uncle, called her to the room on the first floor. She responded to his call. On reaching the room, he bolted the door from inside and made her lie on the bed. He gagged her mouth. He stripped off her salwar from her one leg and had put off his trousers. He laid on her and thrust his penis inside her vagina and thereafter she fell unconscious. When she regained consciousness, she found that there was no one in the room. The respondent had criminally intimidated her not to disclose this incident to anyone, otherwise she would be killed. After 10- 15 days again, the respondent took her to the same room and had sexual intercourse with her. Thereafter, she returned to Dalhousie. After two months again, she visited her grandparents' home on seven days vacation. During her visit, the respondent again took her forcibly to his room where he had sexual intercourse with her. The respondent had again intimidated her not to disclose this act to anyone. After a lapse of 2-3 months again, when she visited her grandparents, the respondent called her but she did not respond and slipped away. Thereafter, she went to the hospital at Kakira with her mother when she developed severe stomach ache and while returning from there, she disclosed to her mother that the respondent had sexual intercourse with her on her visit to grandparents place. She was checked up by a lady doctor. Her statement was recorded at the Police Station, Kihar. She was medically examined. In her cross-examination, she has deposed that white discharge had commenced 10-15 days prior to her visit to the hospital at Kakira. Stomach ache started after 1-2 months when the respondent had sexual intercourse with her. She used to have a lot of pain in the stomach and often she shared with her mother. She went to Kakira Hospital on September 03, 2012. Lady doctor had medically examined her. She did not disclose the incident to her mother after returning home from her grandparents place and only shared the incident with her while returning from the hospital at Kakira. She did not disclose to her mother about the pain since she was not aware that it was an offshoot of sexual intercourse. She further stated that her grandparents are having bedroom on the ground floor. There were total six rooms on the ground floor. One room was in possession of her parents on the ground floor. The other room was given to her youngest uncle, Khem Raj. There were two rooms on the first floor and in one room, her uncle Res Raj resided. Second room on the first floor was in possession of her Papa's uncle. She has admitted that her grandparents have joint family consisting of 20-25 members. She remained confined with the respondent in the room during the act of sexual intercourse for about 9-10 minutes. During sexual intercourse, she had bleeding. Bed sheet had blood stains where the respondent had committed sexual intercourse. Her salwar was also smeared with blood stains. She had a lot of pain and had also raised cries but her mouth was gagged by the respondent. She had not disclosed before the Police while giving statement that she had fallen unconscious. She did not recall as to how long she remained unconscious. The incident had taken place in the morning hours around 8:00 to 9:00 a.m. Female members returned back to the house after one hour of the incident. She had not disclosed about the incident to anyone since accused had threatened to kill her. She had also not disclosed to her mother out of fear on phone since she was not conversant how to make a call on the phone. When the respondent took her

forcibly to the room, there was no one in the close vicinity. She screamed but her mouth was gagged. She had two real uncles. The respondent was the son of her grandfather's brother.

PW-8, Dr. Jasbir Kaur, has deposed that on September 03, 2012, the prosecutrix appeared before her as an OPD patient along with her mother complaining of flatus incontinence (involuntary passage of gas). On her vaginal examination, it was found that hymen was ruptured and her external anal sphincter was also torn. In the opinion of PW-8, the prosecutrix must have been sexually assauled forcibly and since her anal sphincters were also not functioning properly, she might have been sodomised. She issued OPD Slip (Exhibit PW-8/A). In her cross-examination, PW-8 admitted that in the said OPD Slip, parentage and residence proof of the patient was not mentioned. She has also admitted that there was over-writing with regard to date on the OPD Slip. According to her, this over-writing could be done by the person who issued the said slip. She has admitted that she had not given history with regard to internal examination of the patient in the OPD Slip.

PW-9, Dr. Arti Sharma, has also examined the prosecutrix. She has not noticed any injury marks on the whole body and private parts of the prosecutrix. She noticed that hymen was torn, vagina admitted two fingers and the prosecutrix had been subjected to sexual intercourse. It was not possible to say when the said incident was committed. She issued MLC, which is marked as Exhibit PW-9/B. We may also mention at this stage that PW-3 proved the date of birth of the prosecutrix as April 21, 2000, as per the Birth and Death Register. This fact is not disputed. Likewise, PW-7 Dr. Ajay Nath had examined the respondent and in his opinion the respondent was capable of performing sexual intercourse. This fact is also not disputed by the respondent. Relationship of parties is also not in dispute, i.e., the respondent is the son of prosecutrix's grandfather's brother. In this manner, prosecutrix is the niece of the respondent. It is also not in dispute that the respondent was living in the same house where the grandfather of prosecutrix was staying. Insofar as the respondent is concerned, his statement was recorded under Section 313 of the Cr.P.C. wherein he deposed that he was falsely implicated because of some family dispute over the property.

The trial court, after analysing the evidence, found that there were few contradictions in the statement of PW-1 and her daughter PW-2 with regard to the period of stomach ache and the duration for which she was on medication by the local doctor/private chemist. However, in the opinion of the Sessions Court, these were very minor discrepancies. The Sessions Court noted that the prosecutrix was only nine years old child when the incident happened and she was only twelve years of age when she deposed in the Court and, therefore, it could not be expected of her to report each and every fact by giving minute details. The trial court further observed that both the witnesses withstood the test of credibility as even after undergoing detailed cross-examination their depositions on vital aspects remained firm and could not be shaken.

The main argument advanced by the defence before the trial court was that it was a case of inordinate delay where reporting to the Police was three years after the incident. The trial court, however, was not convinced by this argument. In the judgment given by the trial court, detailed reasons are given, which will be discussed at the appropriate stage by us, as to how, in the given circumstances, the prosecution was able to explain the delay. Taking aid of various pronouncements of this Court on this aspect, the trial court concluded that the said delay had not dented the case of

the prosecution. Other argument of the defence that PW-1, mother of the prosecutrix, had filed false complaint to implicate the respondent on account of family feud was also not found to be convincing.

In the ultimate analysis, the trial court believed the statement of the prosecutrix as true since it was supported by medical evidence on record. It was found to be trustworthy and not shrouded with any doubt. The trial court pointed out that the statement of PW-8 clearly suggested that the prosecutrix was forcefully raped by the respondent and as a result of that her hymen was ruptured and her external anal sphincter was also torn. Even internal sphincter was not continence. She found that anal sphincter of the prosecutrix was not functioning properly. In the opinion of PW-8, on account of injury to the prosecutrix's anal sphincter, she might be a sufferer throughout her life.

Another argument of the defence before the trial court was that it was impossible that such an incident would have occurred in the house where so many family members lived. In such circumstances, it could not be believed that the respondent would have taken the prosecutrix to the room on the first floor and committed sexual intercourse. This argument was also brushed aside by the trial court pointing out that, in her cross- examination, the prosecutrix has stated that the incident had taken place in the morning hours, around 8:00 a.m. to 9:00 a.m. Female members of the family returned back to the house after one hour of the incident. The prosecutrix had stated that she had not disclosed about the incident to anyone since the respondent had threatened to kill her and also did not disclose to her mother on phone, out of fear. She was not conversant how to make a call on phone. The Sessions Court found that the testimony of the prosecutrix appeared to be true. It could not have been expected of a child of tender age to narrate the incident or share the happening with her to anyone when she had been put under fear by the accused. Even she could not disclose this incident to her mother. Her testimony that she did not disclose to her mother out of fear on phone appeared probable to the Session Court, keeping in view her tender age.

Concluding that the deposition of the prosecutrix was found to be credible and trustworthy, which was sufficient to convict the accused person even in the absence of any corroboration, insofar as the present case is concerned, the medical evidence supported her version. On this basis, conviction of the respondent was recorded under Sections 376(2)(f) and 506 of the IPC.

Before the High Court, the respondent made same arguments in order to shake the case of the prosecution and argued that the trial court did not consider these arguments in the right perspective. The High Court found the arguments of the defence as convincing, inasmuch as, according to the High Court:

> (a) FIR was lodged much belatedly, which was fatal to the prosecution when the delay was not satisfactorily explained;
>
> (b) there were 20-25 persons in the joint family who resided together in the same house in Aruwan. As per the prosecution, since the incident happened at 8:00 a.m. to 9:00 a.m., it was not believable that where there is a joint family consisting of 20-25 members, such an incident could take place;

(c) even if some of the members of the family were not found to be in the house at the time of incident, the prosecutrix was supposed to disclose this incident to the other members of the family, including her mother, when she met her;

(d) according to the prosecutrix, her salwar was smeared with blood stains and it could not have gone unnoticed;

(e) in a house of ten rooms occupied by 20-25 persons, if the prosecutrix had screamed, it would not have gone unnoticed;

(f) there was a dispute between the parties, which was apparent from the contents of Exhibit DW-1/A, which could have been the reason for lodging the complaint belatedly on September 06, 2012;

(g) even when the incident was narrated by the prosecutrix to her mother on September 03, 2012, the complaint was lodged three days thereafter, i.e. on September 06, 2012, which was also fatal.

Learned counsel for the State made an endeavour to tear through the reasoning given by the High Court with the submission that these were hardly any reasons to give benefit of doubt to the respondent having regard to the impeccable testimony of the prosecutrix herself, more particularly when that is to be read along with the deposition of PW-1 (her mother) as well as medical evidence. He submitted that the High Court did not go in the right direction while analysing the evidence on record, inasmuch as, it totally ignored the principles on which such depositions are to be analysed and adjudged. It was also argued that the delay in reporting the matter was satisfactorily explained, which was accepted by the trial court on sound reasoning. He also submitted that presence of other persons in a joint family in such a big house was totally inconsequential which was given undue importance by the High Court. It was also submitted by him that the alleged dispute between the parties could not have been a reason for the mother of the prosecutrix to make a false FIR thereby exposing her minor daughter of tender age in a charge of this kind and putting her future in jeopardy. He read out from the reasons given by the trial court discussing all these aspects in detail and submitted that the High Court, in the impugned judgment, has not at all stated as to how the trial court went wrong in its analysis of the evidence.

Learned counsel for the respondent, on the other hand, submitted that the reasons given by the High Court were strong and formidable reasons which are sufficient to put considerable dent on the veracity of the prosecution case and, therefore, the High Court rightly held that the charge against the respondent could not be proved beyond reasonable doubt thereby rightly giving the benefit of doubt to the respondent. He also relied upon the discussion contained in the judgment of the High Court and the reasons given by the High Court in quashing the verdict of conviction against the respondent.

We have already narrated the case of the prosecution as well as the testimonies of the prosecutrix, her mother PW-1 and the medical evidence. After going through the evidence of the prosecutrix and

her mother, we find that apart from some minor and trivial discrepancies with regard to the period of stomach ache or about the medicine taken from the local doctor/chemist, insofar as material particulars of the incident are concerned, version of both these witnesses is in sync with each other. Here is a case where charge of sexual assault on a girl aged nine years is leveled. More pertinently, this is to be seen in the context that the respondent, who is accused of the crime, is the uncle in relation. Entire matter has to be examined in this perspective taking into consideration the realities of life that prevail in Indian social milieu.

As per the prosecutrix, she was called by the respondent to his room, which is on the first floor of the house. Unmindful of what could be the motive of an uncle to call her, she obliged as a dutiful child. However, according to the prosecution, unfortunate incident happened. It happened with a nine year old child who was totally unaware of the catastrophe which had befallen her. Her mental faculties had not developed fully; she was in the age of innocence; unaware of the dreadful consequences. Further, at the time when she was being sexually assaulted, her mouth was gagged so that she was not able to scream and after the incident she was threatened not to disclose this incident to anybody. In fact, she kept mum out of this fear. It is quite understandable that a nine year old child, after undergoing traumatic experience and inflicted with threats, would be frozen with fear and she could not find voice to speak against her uncle. In cases of incestuous abuse, more often, silence is built into the abuse. Incident came to light and tragedy struck on the prosecutrix only when her mother noticed that she was continuously suffering from stomach ache and was, therefore, taken to a Gynecologist for her treatment. But for the above, matter may not have come to light. It is only after she was examined by Dr. Jasbir Kaur (PW-8), who had medically examined and formed the opinion that the prosecutrix had been sexually assaulted forcibly about 2-3 years ago, since her hymen was ruptured and her external and internal sphincters were also torn, that PW-1 queried the prosecutrix and she revealed the incident, hitherto hidden by her from the entire world out of fear, not only as a result of the threats extended by the respondent but for varied other reasons.

When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in Tulshidas Kanolkar v. State of Goa[1]:

> "5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory

explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle." In Karnel Singh v. State of Madhya Pradesh[2], this Court observed that:

"7...The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false..." Likewise, in State of Punjab v. Gurmit Singh & Ors.[3], it was observed: "8...The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged..." Notwithstanding the fact that the trial court accepted the explanation for delay as satisfactory by giving detailed reasons, we are dismayed to find that the High Court has been swayed by this delay in reporting the matter with omnibus statement that it is not satisfactorily explained without even an iota of discussion on the explanation that was offered by the prosecution in the form of testimonies of PW-1 and PW-2.

It seems that the main reason which has influenced the mind of the High Court is that there were 20-25 persons in the joint family and some of them were bound to be in the house at the time of the incident and, therefore, it was not possible that such an incident would go unnoticed if it had actually happened. This is coupled with the fact that the salwar of the prosecutrix was smeared with blood stains, which could not have gone unnoticed. Here again, the High Court has gone by the aforesaid two facts without going into the details and the discussion is totally perfunctory. The aforesaid two facts are simply noted and on that basis the prosecution version is discarded as unbelievable. These may have been relevant factors only if there was absence of any explanation by the prosecution on these aspects. In the first instance, it may be noticed that the room of the respondent was on the first floor where the prosecutrix was called. Defence has nowhere stated that on the first floor there were rooms adjacent to the room of the respondent and there were other members of the family. What is smoke-screened in the process is that in the cross- examination the prosecutrix categorically stated that the incident had taken place in the morning hours around 8:00 a.m. to 9:00 a.m. and the female members returned back to the house after one hour of the incident. It also came in her cross-examination that

during the act of sexual intercourse, she remained confined in the room for about 9-10 minutes. She raised screams but her mouth was gagged. Her confinement by the respondent on the first floor for about 9-10 minutes was insignificant and would not have been taken note of by the other family members who might have been present there. Further, nobody could notice as her screams were doused by gagging her mouth. Her statement also suggests that she had fallen unconscious and on regaining consciousness she did not find anyone in the room. After she came out of the room, she obviously refrained from disclosing the incident to anyone because of the threat extended to her by the respondent. In such a situation, obviously the prosecutrix had ensured that her salwar which was smeared with blood stains is not seen by any person.

Likewise, delay of three days in lodging the FIR by PW-1, after eliciting the information from her daughter PW-2, is inconsequential in the facts of this case. It is not to be forgotten that the person accused by the prosecutrix was none else than her Uncle. It is not easy to lodge a complaint of this nature exposing prosecutrix to the risk of social stigma which unfortunately still prevails in our society. A decision to lodge FIR becomes more difficult and hard when accused happens to be a family member. In fact, incestuous abuse is still regarded as a taboo to be discussed in pubic. This reticence hurts the victims or other family members who struggle to report. After all, in such a situation, not only the honour of the family is at stake, it may antagonize other relations as well, as in the first blush, such other members of family would not take charge of this nature very kindly. We also find that the so-called dispute between the parties was so trivial in nature that it would not have prompted PW-1 to lodge a false complaint, putting her minor daughter of impressionable age to risks of serious kinds, as pointed out above.

By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevent such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire

need to have a survivor centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long lasting effects on such victims.

After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See Bhupinder Sharma v. State of Himachal Pradesh[4]}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.

From the evaluation of the prosecution material discussed above, it is abundantly clear that the evidence brought on record contains positive proof, credible sequence of events and factual truth linking the respondent with rape of the prosecutrix and had criminally intimidated her. Hence, respondent is found to be guilty for offence under Sections 376(2)(f) and 506 of IPC since he committed rape with a minor girl aged nine years. It is pertinent to point out at this stage that at the time of deposition of the prosecutrix in the Court, the trial court had an opportunity to see her demeanor. On that basis, the trial court in the judgment had commented as under:

“66. The statement of prosecutrix inspires confidence even though a child witness since while deposing in the Court her demeanor appeared like that of competent witness and no likelihood of tutor. I find her testimony reliable since she was found competent to depose after preliminary inquiry as she understood questions and to give rational answers. I have gone through her statement with extra caution and full of circumspection. Therefore, I have no hesitation to believe her statement.” At this juncture, we would also like to reproduce the following passage from the judgment of

this Court in State of Rajasthan v. Om Prakash[5]:

"19. 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. The overturning of a well-considered and well-analysed judgment of the trial court on grounds like non-examination of other witnesses, when the case against the respondent otherwise stood established beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwears was wholly insignificant." In the result, we allow this appeal, set aside the judgment of the High Court and restore the conviction recorded by the trial court. The respondent shall undergo rigorous imprisonment for a period of twelve years for the offence under Section 376(2)(f) and shall also pay a fine of ?50,000, failing which he shall undergo further sentence of one year. He is also convicted for committing offence under Section 506 IPC for which he is sentenced to rigorous imprisonment for two years. Both the sentences shall run concurrently. The respondent be taken into custody forthwith to serve out his remaining sentence.

.....J. (A.K. SIKRI) .....J. (ABHAY MANOHAR SAPRE) NEW DELHI;

DECEMBER 15, 2016.

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[1] (2003) 8 SCC 590 [2] (1995) 5 SCC 518 [3] (1996) 2 SCC 384 [4] (2003) 8 SCC 551 [5] (2002) 5 SCC 745