Sanjay vs.state

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SooperKanoon Citation : sooperkanoon.com/1203575

Court : Delhi

Decided On : Feb-20-2017

Appellant : Sanjay

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 600/2000 Judgment reserved on :

31. t January, 2017 Date of decision :

20. h February, 2017 Through: Mr.M.L.Yadav, Adv. versus Through: Ms.Aashaa Tiwari, Addl. P.P. for the ..... Respondent ..... Appellant SANJAY STATE State. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE ANU MALHOTRA ANU MALHOTRA, J.

JUDGMENT1 This judgment shall dispose of Criminal Appeal No.600/2000 filed on 30.09.2000, whereby the appellant Sanjay S/o Veer Singh has assailed the impugned judgment dated 19.09.2000 of the learned Additional Sessions Judge (ASJ) Shahdara, in State Case
in FIR No.153/99, PS Bhajanpura whereby the appellant was convicted for the commission of rape on the prosecutrix as defined under Section 375 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and was convicted thereunder. The appellant has also assailed the impugned order on sentence dated

20.09.2000 in the said case whereby he was sentenced to undergo imprisonment for life and was held liable to pay a fine of Rs.5000/- and in default of the payment of the fine to undergo further simple imprisonment for six months with the direction that he would be entitled to the benefit of the period of the detention already undergone being set off under Section 428 of the Criminal Code of Procedure, 1973 Crl.A.No.600/2000 Page 1 of 26 (hereinafter referred to as Cr.P.C.) both during trial, investigation and enquiry.

2. Notice of the appeal was issued to the State. The trial Court record has been requisitioned, received and perused. Vide order dated 11.12.2006 of this Court the sentence of imprisonment of the appellant has been suspended as per the condition imposed thereby of furnishing a personal bond in the sum of Rs.10,000/- with two sureties of the like amount. As per the nominal roll, received from the Superintendent Jail-1, Tihar, New Delhi, the appellant had undergone a period of 7 years, 7 months and 27 days of incarceration till his release on 13.12.2006 on bail.

3. Arguments were addressed on behalf of the learned counsel for the appellant, Mr.M.L.Yadav, and on behalf of the State by the learned Addl. Public Prosecutor, Ms.Aashaa Tiwari,. PROSECUTION VERSION4 The prosecution version set forth through the charge-sheet instituted on 24.06.99 before the court of the Metropolitan Magistrate, which was vide order dated 13.08.1999 committed to the Court of Sessions, is to the effect that on 22.03.1999 at about 10:25 AM at House No.235 Khumra Mohalla, Ghonda, Delhi within the jurisdiction of PS Bhajanpura, the accused/the appellant herein had committed rape on the prosecutrix (AB-pseudo name) and committed an offence punishable under Section 376 of the IPC, 1860 in relation to which, the charge of allegations was framed on 16.09.1999 to which the accused/the appellant herein, pleaded not guilty and claimed trial. The prosecution version set forth through Ex. PW-2/B the complaint, made by the mother (CD- pseudo- nym) of the prosecutrix (AB hereafter), is to the effect that her daughter, the prosecutrix-AB was born on 07.09.1983 and since birth was unable to speak and was mentally retarded and that on 22.03.1999 at about 10:00 AM when the mother of the prosecutrix-AB was unable to find the prosecutrix-AB at home, Crl.A.No.600/2000 Page 2 of 26 she began looking for her and whilst searching for her, CD i.e. the mother of the prosecutrix reached the house of her

brother-in-law (Devar- i.e. her husbands younger brother) and she heard the noise of a scuffle coming from the upper room and thus she went to the upper room and saw that the doors of the room were shut which she opened and saw the accused/the appellant herein Sanjay S/o Veer Singh i.e. her brother-in-laws son lying on AB, her daughter prosecutrix and doing galat kaam i.e. a wrong act and that she also saw the prosecutrix trying to save herself whereupon she, CD, the motherof the prosecutrix (AB) started shouting loudly on which Subhash Chand S/o Dal Chand who also was the resident of the same area of Purani Abadi, Khumra Mohalla, Ghonda came up and apprehended Sanjay, the accused/the appellant herein who was trying to abscond and he also telephoned the police. The complainant (CD) i.e. the mother of the prosecutrix complained further that the accused/the appellant herein had committed galat kaam i.e. rape of the prosecutrix without her consent.

5. On the basis of the telephonic call made by Subhash Chand S/o Dal Chand, DD No.12A is indicated to have been registered at 11:50 AM at PS Bhajanpura on 22.03.1999 on receipt of the information from the wireless operator of commission of rape on an unknown girl at House No.235, Khumra Mohalla, Ghonda and that the police be sent whereafter SI Jitender Singh alongwith Ct. Ved Prakash No.1164 North East and W/Ct. Amrik Kaur No.1553 North East went to the spot.

6. As per Ex.PW-10/A, the endorsement, made by the IO SI Jitender Singh on the basis of the statement of the complainant (CD) i.e the mother of the prosecutrix, he sent the rukka through Ct.Ved Prakash to PS Bhajanpura for the registration of the FIR, which as per Ex.PW-6/C, the endorsement made by the Duty Officer HC Madhvi, is indicated to have been registered vide DD No.Crl.A.No.600/2000 Page 3 of 26 12A at 11:50 AM. As per the charge-sheet the IO got the medical examination of both, the prosecutrix and the accused/the appellant herein conducted and obtained their MLCs No.A-10
and B-10
respectively. The IO SI Jitender Singh , as per his testimony on examination as PW-10 has also testified to the arrest of the accused/the appellant herein vide memo Ex.PW-10/B and to having conducted his interrogation and to the recording of the disclosure statement of the accused/the appellant herein which is Ex.PW-

2/C and having prepared the pointing out memo Ex.PW-2/D on the pointing of PW-2, the complainant. The IO also testified to having given intimation regarding the arrest of the accused at his house vide memo Ex. PW-10/C and to having recorded the statement of other witnesses and having deposited the case property with the MHC(M) on his return to the PS. The exhibits i.e one Kameez and Salwar (i.e. clothes of the prosecutrix) Ex.P1 and P2 respectively and the vaginal swab are indicated to have been handed over by the doctors at the GTB hospital to HC Rajender in a sealed condition along with the slide and sample seal along with the blood sample of the accused/the appellant herein and semen sample of the accused/the appellant herein which were seized by the IO vide seizure memo Ex.PW-2/F. The clothes of the accused/the appellant herein i.e. Pant, Shirt, underwear Ex.P-3,4 and 5 are indicated to have been seized by the IO vide seizure memo Ex.PW-4/A and were sealed with the seal of JKS and all the exhibits were stated to have been sent by the IO on 16.06.1999 to the CFSL, Calcutta through Ct. Brij Pal in relation to which the CFSL result is Ex.PW-10/B.

7. During the course of investigation, the statement of the complainant (CD) i.e. mother of the prosecutrix and of Subhash Chand (PW-5) is also indicated to have been recorded by the IO.

8. The forensic examination result i.e. CFSL/EE/99/DEL-290 dated Crl.A.No.600/2000 Page 4 of 26 03.08.1999 on the record indicates presence of human semen on Ex.1(A) (Kameez) with reddish brown stains and starchy whitish stains and Ex.1(B) the Salwar, also tested positive for human semen and was found having reddish brown stains and starchy whitish stains. Blood of the group AB is indicated to have been found as per the Serological Section Biology Division report dated 06.09.1999 on the kameez, salwar i.e. clothes of the prosecutrix and the cotton swab i.e. control blood sample and also cloth cutting i.e. control semen sample and also on the shirt cuttings, all of human origin. The report dated 06.09.1999 of the CFSL, Calcutta was prepared by the Senior Scientific Officer of the CFSL, and thus in terms of Section 293 of the Cr.P.C. 1973, is per se admissible in evidence. Furthermore, PW-11 Mrs.G. Bhattacharya, the Junior Scientific Officer, CFSL, Calcutta through her unchallenged testimony proved the report Ex.PW-11/A and Dr.I. Haque, PW-12 Senior Scientific Officer, CFSL,

Calcutta through his unchallenged testimony also proved the report of the Serological Divison/Biological Division Ex.PW-10/D.

9. The MLC of the accused/the appellant herein, Ex.PW-1/A on the record indicated that he was 23 years of age on the date of the commission of offence i.e. 22.03.1999. The MLC of the accused/the appellant herein, also indicates that the pant and underwear worn by the accused/the appellant herein, and his blood group sample were taken and handed over by the doctor to the IO. The said MLC Ex.PW-1/A prepared by the Dr. T.R. Ramtek, Chief Medical Officer (CMO), GTB hospital, examined as PW-1 has not been assailed by cross-examination on behalf of the accused/the appellant herein.

10. The MLC of the prosecutrix (AB), Ex.PW-3/A dated 22.03.1999 indicated the age of the prosecutrix to be 16 years and showed her hymen to be torn. The MLC Ex. PW-3/A prepared by PW-3 Dr. Sandhya Gupta, Senior Resident, GTB Hospital also showed that the under-clothing of the Crl.A.No.600/2000 Page 5 of 26 prosecutrix was stained with blood; that the prosecutrix was mentally retarded, deaf and dumb since birth and as per the testimony of PW-3 and as per the MLC Ex.PW-3/A, she was conscious with altered behaviour and she was bleeding from the vagina after the act. PW-3 Dr.Sandhya Gupta through her testimony has also testified to the effect that she had found the hymen of the patient to be freshly torn and that the patient did not allow internal examination and that the vaginal swab was taken, sealed and handed over to the constable for examination and under-clothing stained with blood were sealed and handed over the constable. On being cross- examined on behalf of the accused/the appellant herein, Dr.Sandhya Gupta who examined the prosecutrix, stated that she had examined the patient i.e. prosecutrix immediately without loss of time when she had reached her for medical examination and she further deposed that she has found fresh blood and the hymen was torn. Though this witness stated that blood on the under-clothing could also be of the menstruation cycle, on being cross- examined by the learned APP for the State, Dr.Sandhya Gupta PW-3 testified to the effect that though it was true that blood on the under- clothing could be because of menstruation cycle but in this case there was a freshly torn hymen and there was a history of sexual assault and thus in her opinion in all probabilities, blood on the under-clothing of the

patient was on account of freshly torn hymen in relation to which aspect there was no cross-examination conducted on behalf of the accused/the appellant herein despite opportunity granted.

11. In support of the prosecution version set forth in the charge-sheet, the State examined 12 prosecution witnesses. PLEA OF DEFENCE12 The accused/the appellant herein led no evidence in defence but admitted Crl.A.No.600/2000 Page 6 of 26 that he was the son of the real brother-in-law (Devar) of the complainant but claimed innocence and denied the commission of any offence of rape, though he admitted that he was medically examined. The accused/the appellant herein further claimed that he had been falsely implicated due to enmity over property between him and father of the prosecutrix and stated that the prosecution witnesses had testified falsely and were interested witnesses. PROSECUTION EVIDENCE13 The complainant (CD), the mother of the prosecutrix, categorically testified to the effect that the prosecutrix was born on 07.03.1983 and was mentally retarded from birth and since birth had been unable to speak, unable to hear and unable to understand anything despite regular treatment since birth.

14. The testimony of the complainant PW-2 (CD) is categorically to the effect that on 22.03.1999 at about 9:00AM she was cooking at her house and after she had finished cooking at about 10:00 AM she found that her daughter was not at the house and she searched for her daughter everywhere in the mohalla and in the process of searching her, she went to the adjacent house of her brother-in-law (Devar) and she reached the first floor of that house where she heard the noise of a scuffle (hathapai) and she pushed the door and the door opened and she saw accused/the appellant herein, son of her brother-in-law (Devars son), whom she also identified as being present during trial, having laid her daughter (the prosecutrix) down on the floor and she also saw him committing rape on her. The complainant (CD) PW-2 also testified categorically to the effect that her daughter was making noise and was crying and was screaming and there was blood on the floor which was flowing and there were spots of blood on the wall and on seeing this she started making a loud noise and came down and on hearing her sound, another brother-in-laws son (Devars son) Subhash Chand S/o Dal Chand came and apprehended Crl.A.No.600/2000 Page 7 of 26 Sanjay, accused/the appellant

herein who was trying to run down and thereafter the police came to the spot and made inquiries from her and she had told the police everything and had signed her statement Ex.PW-2/A, whereafter she testified that the accused/the appellant herein, was also arrested and her daughter was taken to the GTB hospital where she was medically examined and her clothes had also been taken by the doctor and seized by the police. In her testimony PW-2, the complainant (CD), the mother of the prosecutrix identified the clothes of her daughter Ex.P1 and P2.

15. PW-5 Subhash Chand S/o Dal Chand testified to the effect, that on 22.03.1999 at about 10.30 AM he was passing by in front of House No.235, Khumra Mohalla, Ghonda, Delhi when he heard the noise of a lady coming from upstairs which on being questioned as to what kind of sound it was, he clarified to the effect that the sound was of Pakro pakro and on hearing the sound he went up to the first floor and he saw the complainant, the mother of the prosecutrix trying to surround the accused/the appellant herein and the accused/the appellant herein was trying to run away and thus he- PW-5 Sh. Subhash Chand had apprehended Sanjay and then the complainant (CD) i.e. the mother of the prosecutrix informed Subhash Chand that the accused/the appellant herein had committed rape on the prosecutrix (AB). As per the testimony of this witness he went inside and saw that the girl (the prosecutrix) was lying on the floor and her clothes were on the floor which was blood stained, and that he PW-5 brought the accused/the appellant herein by holding him with his hand down and informed the police and the police came to the spot and thereafter he, - i.e. PW-5 had handed over the accused/the appellant herein to the police, who then conducted the investigation and also recorded his statement. This witness further categorically stated that the complainant (CD) was the real Aunt (Chachi) of the accused/the appellant herein and stated that Crl.A.No.600/2000 Page 8 of 26 the prosecutrix cannot speak and cannot understand anything and that she was disabled, both physically and mentally. He also stated that they all i.e. he and the accused/the appellant herein and the prosecutrix and the complainant, were residents of the same village. On being cross-examined on behalf of the accused/the appellant herein, this witness stated that he knew the father of the prosecutrix since childhood though he was not his friend as there was a large age difference between him and the father of the prosecutrix (PW-2, the mother of the prosecutrix, as per her testimony is

indicated to have been aged 43 years on the date of her testimony recorded on 30.09.1999 and Subhash Chand examined as PW-5 is indicated to be aged 36 years on the date of his testimony recorded on 25.10.1999 making this statement of PW- 5 that there was a age gap between the father of the prosecutrix and himself i.e. PW-5 and thus there was no scope for friendship between them, - wholly plausible).

16. The cross-examination of PW-5 is further to the effect, that when he had gone up to that house from where he had heard the noise coming, he found the complainant i.e. mother of the prosecutrix at the door and she had stopped the accused/the appellant herein who was within the room. The cross-examination of PW-5 is categorical to the effect that when he reached up, he found the clothes of the prosecutrix open and dishevelled and he also saw blood on the floor where the prosecutrix was lying and also saw stains on the clothes of the prosecutrix. He stated that he did not see any blood stains on the wall of that room. He stated that the police reached the spot after about one hour of his having telephoned the police. The witness categorically denied that he had testified falsely being a friend of the father of the prosecutrix. He also stated that he was at the hospital where the accused and the prosecutrix had been taken, for about 1 hour. Crl.A.No.600/2000 Page 9 of 26 17. The testimony of PW-4 HC Amrik Kaur, who went to the spot along with the IO and Ct. Ved Prakash corroborated the factum of the prosecutrix being unable to speak and to production of the accused by Subhash Chand- PW-5 before the police and to his arrest and to the seizure of the clothes of the prosecutrix and the accused by the IO, after their medical examination was conducted at the hospital.

18. PW-6 put forth in the witness box by the State, was HC Madhvi, the Duty Officer at PS Bhajanpura, who testified to having recorded the DD No.12 A at 11:50 AM, copy of which was exhibited as Ex.PW-6/A and who testified to having handed over the copy of the said DD entry to SI Jitender Singh and to having registered the FIR No.153/99, PS Bhajanpura on receipt of the rukka brought by Ct. Ved Prakash sent by SI Jitender. The carbon copy of the FIR is exhibited as Ex.PW-6/B.

19. PW-7 put forth in the witness box was HC Rajinder Singh, the Duty Officer at GTB on 22.03.1999 who testified to the effect that four sealed parcels and two sample seals were handed over by the doctor to him i.e. one by the doctor who examined the girl and the other by the doctor who examined the boy and he handed over the said sealed parcels to the IO in the same condition in which the same were delivered to him, which were seized vide seizure memo Ex.PW-2/F by the IO in the presence of Ct.Ved Prakash.

20. PW-8 put forth in the witness box, was Ct.Ved Prakash who testified to having accompanied Ct.Amrik Kaur and SI Jitender Singh to House No.235 Khumra Mohalla, Ghonda, Delhi on 22.03.1999 on receipt of call at 11.15 AM and he corroborated the prosecution version in relation to the recording of the statement of mother of the prosecutrix, to the registration of the FIR, to the arrest of the accused and his disclosure statement and pointing out by the accused, to the seizure of the clothes of the accused and of the prosecutrix after Crl.A.No.600/2000 Page 10 of 26 their medical examination and to the identification of the clothes seized. This witness through cross-examination testified that there was fresh blood lying at the spot of the occurrence which was in the nature of the blood spots on the floor though it was not flowing.

21. The prosecutrix was produced on 16.11.1999 during trial but as observed by the then learned ASJ, the witness did not understand any questions even as to her name, parentage or any residential address and it was informed by the learned APP that the witness was mentally retarded and speech impaired. The said witness was discharged by the learned trial Court as being incompetent to testify. FINDINGS OF THE TRIAL COURT22 The learned trial Court vide its impugned verdict dated 19.09.2000 has categorically observed to the effect that the prosecution has been able to prove the allegations against the accused/the appellant herein beyond a reasonable doubt through the testimonies of prosecution witnesses examined. The learned trial Court also observed to the effect that there was no plausible defence that had been put forth on record by the accused/the appellant herein, apart from immaterial contradictions pointed out by the counsel for the defence which as observed by the learned trial Court, did not in any manner lend any assistance to the accused/the appellant herein. It was also

observed by the learned trial Court that there was nothing on record to substantiate the defence of the accused/the appellant herein that there was any dispute over any property between the father of the prosecutrix and his brother nor was there anything on record to substantiate the bald suggestion put to the mother of the prosecutrix i.e. to the complainant that the father of the accused was killed by the father of the prosecutrix by burning him with oil and rather PW-2 had volunteered that the father of the accused had died by burning himself and that the said aspect was Crl.A.No.600/2000 Page 11 of 26 not even stated by the accused/the appellant herein in his statement under Section 313 of the Cr.P.C., 1973.

23. The learned trial Court has also observed to the effect that merely because the mother of the prosecutrix stated that there was blood on the wall which was not so testified by Ct. Ved Prakash nor by IO, nor by PW-5 Subhash Chand, the same was just an exaggeration which does not affect her deposition on the merits of the case. The learned trial Court did not give credence to the contention raised on behalf of the accused/the appellant herein as to how a deaf and mute girl can cry and shout at the time of alleged rape, observing that even a mute person can cry and shout in his own way.

24. The absence of external injuries on the person of the prosecutrix and absence of abrasions on the private part of the accused/the appellant herein were also held inconsequential by the learned trial Court, in view of the testimony of PW-3 Dr.Sandhya Gupta, Senior Resident, GTB who examined the prosecutrix and had categorically deposed that blood on the undergarments of the prosecutrix was on account of a freshly torn hymen and not due to a menstrual cycle.

25. Delay in the medical examination of the prosecutrix was also held to be not fatal by the learned trial Court, while observing to the effect that through the evidence it was brought forth that it was quite possible that it took time for the legal formalities to be completed before the actual medical examination of the prosecutrix to be conducted.

26. The learned trial Court also observed to the effect that non-examination of the prosecutrix in the instant case when she was mentally retarded, deaf and dumb

was in no way fatal to the prosecution version as was contended on behalf of the defence placing reliance on Section 119 of the Indian Evidence Act, 1872. Crl.A.No.600/2000 Page 12 of 26 27. The non-examination of Ct.Brij Pal who deposited the sealed parcels at the CFSL and the non-examination of the MHC(M) in the facts and circumstances of the instant case where the CFSL reports Ex. PW-10/D and PW-11/A indicated that the parcels were found to be packed on receipt with description of seals intact, when they were received, - was also held to be insufficient to falsify the prosecution version, - especially in view of the categorical testimonies of the complainant PW-2 and other witnesses examined.

28. The learned trial Court also observed to the effect that the consent of the prosecutrix was not so material in this case, she being of unsound mind and thus naturally not able to understand the nature and consequence of the act, and that apart from the same, the mother of the prosecutrix had categorically testified to the effect that the prosecutrix was resisting the commission of the offence by shouting and screaming. CONTENTIONS OF THE APPELLANT29 Through the present appeal the accused/the appellant herein, has put forth the very same submissions that were made before the learned trial Court in relation to the : time of arrest of the accused/the appellant herein to the non- seizure of blood stained earth; to the delay in the medical examination of the prosecutrix and the accused/the appellant herein; qua the delay in registration of the FIR qua the aspect that the complainant did not give the name of the perpetrator of the crime at the hospital and qua the aspect that the medical examination of the accused/the appellant herein also allegedly disproved the allegations against the appellant that the prosecutrix was the cousin sister of the appellant and it was thus Crl.A.No.600/2000 Page 13 of 26 highly unbelievable and rather revolting to suggest that the appellant would ravish his own sister; that there was no report to indicate that the copy of the said report i.e. complaint/information was sent to learned MM; that the CFSL report qua the medical evidence did not support the prosecution version; that the judgment of the trial Court was based on conjectures and surmises and that in any event the sentence awarded to the appellant was harsh.

30. To similar effect, were the submissions made on behalf of the appellant by Mr.M.L.Yadav, learned counsel for the accused/the appellant herein during the

course of arguments of the present appeal. CONTENTIONS OF THE RESPONDENT/STATE31 The State on the other hand, through the learned Addl. PP Ms.Aashaa Tiwari pointed out that the testimonies of the prosecution witnesses examined by the learned trial Court, especially the testimony of PW-2, the mother of the prosecutrix who reached the spot whilst the offence of the rape was being committed by the accused/the appellant herein on her daughter the prosecutrix, who was shouting and making a noise and the testimony of PW-5 who apprehended the accused/the appellant herein and prevented him from escaping when the mother of the prosecutrix was trying to prevent him from running away after she had pushed open the door of the room of the first floor of the house of the accused/the appellant herein where he was committing rape on his own cousin sister who was both physically and mentally disabled being unable to speak, unable to hear and who was mentally retarded, all since birth, - established the guilt of the accused/the appellant herein beyond a reasonable doubt. Crl.A.No.600/2000 Page 14 of 26 32. It was also submitted on behalf of the State that the CFSL reports proved through the testimonies of PW-11 Mrs. G.Bhattacharya and PW-12 Dr.I.Haque whose testimonies have remained unchallenged, - established the existence of human semen of the blood group AB which blood group, was also the blood group of the accused/the appellant herein, on the clothes of the prosecutrix. The State also relied on the testimony of PW-3 Dr.Sandhya Gupta whose testimony brought forth categorically that the blood stains on the clothes of the prosecutrix were due to the hymen being recently torn and who testified also through her testimony on oath that there was vaginal bleeding. ANALYSIS33 On a consideration of the entire available record and rival pleas put forth on behalf of either side, it is brought forth that the testimonies of PW-2, the mother of the prosecutrix, PW-5, the witness who prevented the accused/the appellant herein from absconding when he heard the noise of Pakro-pakro being shouted by the mother of the prosecutrix and who also saw the prosecutrix lying on the floor with open and dishevelled clothes, who saw blood spots on the floor, coupled with the factum that the accused/the appellant herein, took advantage of the factum that the prosecutrix was mentally retarded, deaf and dumb since birth and a minor, coupled with the CFSL reports on the record which stand proved through the testimonies of, PW-11 Dr.G.Bhattacharya and PW-12

Dr.I.Haque, which establish the existence of human semen on the clothes of the prosecutrix and also bring forth that the human semen of blood group AB which was as per the serological report Ex.PW10/D and Ex.PW11/A was also the blood grouping of the accused, - all bring forth the commission of the offence of rape by the accused/the appellant herein on the prosecutrix on 22.03.1999 at about 10.25 AM at house No.235 Khumra Mohalla, Ghonda, Delhi, punishable under Section 376 IPC, 1860, - beyond a reasonable doubt. Crl.A.No.600/2000 Page 15 of 26 CONCLUSION34 The impugned judgment of the learned trial Court dated 19.09.2000 thus suffers from no infirmity nor from any mis-appreciation of evidence and rather takes into account the entire evidence on the record and the statement of the accused under Section 313 Cr.P.C. 1973 rationally and appropriately. There is no reason to differ with the observations of the learned trial Court in relation to the aspect that the contradictions sought to be brought forth on behalf of the accused/the appellant herein, in the facts and circumstances of the instant case, are wholly immaterial especially, where the testimonies of material witnesses PW-2, the mother of the prosecutrix and PW-5 Subhash Chand who apprehended the accused/the appellant herein while he was trying to flee away and who saw the prosecutrix lying on the floor with the clothes open and dishevelled condition and the blood stains on the floor, coupled with the testimonies of the CFSL experts PW-11 and PW-12, coupled with the testimony of PW-1 Dr.T.R.Ramtek whose testimony brings forth that he had handed over the blood sample of the accused of the undergarments to the IO, coupled with the testimony of PW-3 Dr.Sandhya Gupta whose testimony was categorical to the effect that the hymen was freshly torn and she found fresh bleeding and that the said bleeding was not due to any menstruation cycle, coupled with the factum that the PW-3 has also handed over the clothes of the prosecutrix along with the blood sample along with the blood sample to the Constable to be handed over to the IO which clothes of the prosecutrix and of the accused and their blood samples were examined at the CFSL, and which CFSL results, corroborate the existence of human semen of the blood grouping of the accused/the appellant herein on the clothes of the prosecutrix and also corroborate the existence of blood stains on the clothes.

35. The delay in registration of the FIR and the delay in the medical Crl.A.No.600/2000 Page 16 of 26 examination conducted of the prosecutrix in the instant case also does not in any manner detract from the veracity of the prosecution version, in view of the totality of the prosecution evidence on record, which establishes the commission of the offence of the rape by the accused/the appellant herein on the prosecutrix.

36. The impugned judgment dated 19.09.2000 in State Case No.
in relation to FIR No.153/99, PS Bhajanpura, is thus upheld. QUANTUM OF SENTENCE37 On behalf of the accused/the appellant herein, it was submitted that the impugned sentence dated 20.09.1999 whereby the accused/the appellant herein was sentenced to life imprisonment and to pay a fine of Rs.5000/- and in default to suffer six months of simple imprisonment with the benefit of Section 428 of Cr.P.C. was unduly harsh and it was sought that the same be modified.

38. A perusal of the record indicates that the accused/the appellant herein was aged 23 years on the date of commission of the offence i.e. 22.03.1999 and the nominal roll dated 24.01.2017 received from the Superintendent Central Jail -1, Tihar, New Delhi indicates that the accused/the appellant herein has undergone a period of 7 years, 7 months and 27 days of imprisonment as on 13.12.2006.

39. During the course of submissions made on behalf of the accused/the appellant herein it was submitted that the appellant is presently on bail since 13.12.2006, having been released on bail in terms of order dated 11.12.2006 of this Court.

40. It is essential to observe that the offence committed by the appellant is gruesome and barbaric. However, taking into account the factum that there are no other cases against the accused/the appellant herein and no previous convictions against him, it is essential that the sentence imposed on the accused/the appellant herein acts as a deterrent and simultaneously is reformative with a prospect of Crl.A.No.600/2000 Page 17 of 26 rehabilitation.

41. The Law Commission of India in its 42nd report in relation to the Indian Penal Code also observed vide para 3.9 to the effect that a current development in penology is the emphasis of reformation and rehabilitation of the offenders instead

of retribution. The Supreme Court in T.K.Gopal vs. State of Karnataka (2000) 6 SCC168had observed as under : - satisfied That a therapeutic approach in an effective method of punishment which not only the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him which also simultaneously reforms the criminal through processes, the most fundamental of which is that inspite of having committed a crime, even it be a heinous crime, he should be treated as a human being entitled to all basic human rights, human dignity and human sympathy. 42. Justice R.C. Lahoti, the former Honble the Chief Justice of India in a letter dated 13th June, 2013 addressed to the then Honble the Chief Justice of India observed that the conditions in prisons were rather disturbing. The said letter was registered as a Public Interest Litigation, - i.e. Writ Petition Civil No.406/2013 - RE - Inhuman Conditions in 1382 Prisons and vide verdict dated 05th February, 2016, it was directed by the Apex Court vide para 56 to the effect that prisoners like all human beings deserve to be treated with dignity and to give effect to this, one of the positive directions issued at serial No.5 thereof was to the effect : - The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living condition of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc. Crl.A.No.600/2000 Page 18 of 26 (emphasis supplied) 43. Justice Madan B. Lokur, in para 57 of the said judgment, also directed that the Model Prison Manual which is a composite document dealing with the variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programme, legal aid, welfare of prisoner, after care and rehabilitation, Board of Visitors, prison computerization and so on and so forth, - needed to be implemented with due seriousness and dispatch.

44. The modalities laid down in the Model Prison Manual 2016 for the superintendence and management of prisoners in India prepared by the Ministry of Home Affairs, Government of India, New Delhi vide Chapter XXII clause 22.01 prescribe that the process of after-care and rehabilitation of offenders is an integral part of institutional care and treatment.

45. The verdict of the Apex Court in W.P.(C) No.406/2013 dated 05.02.2016 also made reference to the aspect detailed in Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse by Eva S. Nilsen, Boston University School of Law Working Paper Series, Public Law & Legal Theory Working Paper No.07-33, to the effect that : Judges rarely express concern for the inhumane treatment that the person being sentenced is likely to face from fellow prisoners and prison officials, or that time in prison provides poor preparation for a productive life afterwards. Courts rarely consider tragic personal pasts that may be partly responsible for criminal behaviour, or how the communities and families of a defendant will suffer during and long after his imprisonment. 46. The Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Crl.A.No.600/2000 Page 19 of 26 Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May, 1977 bring forth guiding principles in relation to the prisoners under sentence which prescribed as follows : - incidental to justifiable segregation or 56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self- supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings. (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure Crl.A.No.600/2000 Page 20 of 26 from the institution in the the community, but for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group. (2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of

security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide to conditions most fulfilment of favourable the Crl.A.No.600/2000 Page 21 of 26 rehabilitation for carefully selected prisoners. (3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible. (4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

47. The International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December, 1966 vide article 10.3 thereof lays down as under : - The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their rehabilitation. Juvenile reformation and offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. social 48. The statutory provisions of Section 376 (1) of the IPC1860 as it stood on the date of the commission of the offence i.e. 22.03.1999, were to the effect that in cases other than those falling in as prescribed in the unamended Section 376 (2) thereof, were punishable with imprisonment of either description for a term which was to be not less than seven years, but which imprisonment could be for life or for a term which could be extended to ten years and would also be liable to pay fine unless the woman was his own wife and was not under the age of 12 years. Crl.A.No.600/2000 Page 22 of 26 49. Professor Mrinal Satish in his book Discretion, Discrimination, Reforming Rape Sentencing in India in Chapter 4 titled Rape Sentencing: An Empirical Analysis observes: Considering age as a mitigating factor in the matter that Indian Courts have done in rape cases, exemplifies arbitrariness for two reasons. First, considering young age as a

mitigating factor might be permissible if the primary theory of punishment employed is reformation of the offender. Such an approach would not imply that the defendant be released, but that he takes part in programme designed to ensure that he does not re- offend..... It is trite that age or circumstances of the accused per se cannot be treated 50. as the mitigating factors on which the order of sentence could rest. But this is of significance when tested in the context of the time which lapsed since the date of commission of the offence. The delay in hearing the appeal is not attributable to the appellant. We note that on 22.03.1999, the date of commission of the offence, the present appellant was only aged 23 years, and stands convicted by the judgment dated 30.09.2000. In the present case, the sentence imposed upon the appellant was suspended by the order dated 11.12.2006 when the offender has already undergone a period of imprisonment of 7 years, 7 months and 27 days. Since the date of suspension of his sentence, more than ten years have passed. From the date of the commission of the offence on 22.03.1999, almost seventeen years have passed. The 23 years old offender would be in his forties today. He would have been around thirty years of age on 4th December, 2006 when his sentence was suspended. We have no information regarding the financial status of the appellant or as to how his family is positioned. Is he married and does he have the responsibility of looking after a family ?.

51. It could be argued that if the appeal had been heard expeditiously, even if the order of life sentence had been maintained, the appellant would have long Crl.A.No.600/2000 Page 23 of 26 ago been able to seek executive pardon. Hence the sentence of imprisonment, which is hereby proposed.

52. On a consideration of the entirety of circumstances, given the serious nature of the offence committed by the appellant, so that he is given an opportunity to reform and make useful contribution to society and not waste his existence, we consider it appropriate to reduce the sentence imposed by the learned trial Court of life imprisonment and of a fine of Rs.5000/- and in default of a payment of the said fine to undergo simple imprisonment for six months, which is thus so reduced and modified, - to a sentence of Rigorous Imprisonment for a period of ten (10) years and to pay a fine of Rs.5000/- and in default of the payment of the said fine

to undergo simple imprisonment for a period of six months with the benefit of set off of the period of the detention already undergone by the appellant being granted to the appellant in terms of Section 428 of the Cr.P.C. 1973, with positive directions as detailed in para 49 above.

53. It is further essential that the following directives are given to the reduced sentence of imprisonment, to ensure as laid down by the Supreme Court in Phul Singh Vs. State of Haryana in Criminal Appeal No.506/1979 decided on 10.09.1979 that the carceral period reforms the convict.

54. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible : appropriate correctional courses through meditational therapy; educational opportunity, vocational training and skill development programme to enable a livelihood option and an Crl.A.No.600/2000 Page 24 of 26 occupational status; involvement in sports activities and creative art therapy shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent, ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti - social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons; adequate counselling being provided to the appellant to be sensitized to understand why he is in prison; conducting of Psychometric tests to measure the reformation taking place; and that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.

55. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

56. Copy of this judgment be also sent to the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions 57. The accused/the appellant herein who is

on bail in terms of order dated 11.12.2006 of this Court and was released as such on 13.12.2006 as per the nominal roll received from the Superintendent Central Jail-1, Tihar, New Delhi, Crl.A.No.600/2000 Page 25 of 26 is now directed to surrender to custody within 30 days of this judgment to undergo the sentence as modified and awarded by this Court. The learned trial Court (or the successor Court) and the SHO of PS Bhajanpura shall take suitable steps to ensure the compliance of this judgment.

58. The impugned order on sentence dated 20.09.2000 of the learned ASJ, Karkardooma, Shahdara in State Case No.
in relation to FIR No.153/99, PS Bhajanpura is modified accordingly.

59. Criminal Appeal No.600/2000 is disposed off accordingly.

60. The Registry shall ensure that the copy of this judgment is forthwith served on the appellant and his learned counsel Sh. M.L. Yadav.

61. The record of the trial Court be returned forthwith. ANU MALHOTRA, J GITA MITTAL, J FEBRUARY20 2017 Mr Crl.A.No.600/2000 Page 26 of 26