Mool Chand vs.state

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Court : Delhi

Decided On : May-16-2017

Appellant : Mool Chand

Respondent : State

Judgement :

$~17 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL. A. 1353/2013 Date of Judgment:

16. h May, 2017 MOOL CHAND STATE CORAM: Through : Mr.Kanhaiya Singhal, Adv. ..... Appellant versus ..... Respondent Through : Mr.Rajat Katyal, APP for the State with W/SI Rama Saroha. HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE REKHA PALLI G.S. SISTANI, J.

(ORAL) 1. This is an appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) filed against the judgment of conviction dated 28.06.2013 and order on sentence dated 29.06.2013 by which the appellant has been convicted under Sections
(2)(f) of the Indian Penal Code, 1860 (IPC) and has been sentenced to undergo rigorous imprisonment for a period of seven years for the offence committed under Section 363 IPC with fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for three months. The appellant further stands sentenced to life imprisonment for the offence committed under Section 376 (2) (f) along with fine of Rs. 10,000/- and in default of payment of fine, simple

imprisonment for six months.

2. Before the rival submissions of learned counsel for the parties can be considered, we deem it appropriate to state the case of the prosecution in short.

3. It is the case of the prosecution that on 17.08.2012 information regarding rape of a
year old girl, resident of H. No.A-107, Jailorwala Crl.A. 1353/2013 Page 1 of 16 Bagh, Phase-II, Ashok Vihar, Delhi, was received and recorded vide DD No.16A (Ex.PW7/A) at PS Ashok Vihar. The said information was given to SI Rajender Singh (PW-13) through telephone and PSI Suman Bajaj was also sent to the spot where on inquiry by SI Rajender Singh (PW-13), public persons disclosed that the victim girl, with whom the incident had taken place, had been taken to BJRM Hospital by a PCR. PSI Suman (PW-17) met Smt. Maharaji (PW-9), mother of victim child at the spot and they both reached at BJRM Hospital and met the victim child. PSI Suman (PW-17) obtained MLC (Ex.PW4/A) of the victim child, whereupon the concerned doctor had mentioned alleged history of sexual assault. PW-17 seized sexual assault evidence collection kit and sample seal, after obtaining the same from the concerned doctor, who had medically examined the prosecutrix.

4. Thereafter, PW-17 along with the victim child (PW-1) and her mother Smt. Maharaji (PW-9) returned back to PS, where Smt. Maharaji (PW-9) gave her statement (Ex.PW9/A) stating that she was residing at House No.A-107, Jailorwala Bagh, Phase-II, Ashok Vihar, Delhi with her family and that she was working in a factory at Wazirpur Industrial area. She further stated that she used to leave for work at 9:00 AM and that on 17.08.2012 she went for work at 9:00 AM as usual, leaving behind her daughter (PW-1) and son (PW-14), who were playing in a park outside their home. At that time, her neighbour Mool Chand/appellant was also sitting in the said park near the school. She further stated that at about 10:00 AM, her son Shailesh (PW-14) came to factory and told her that her daughter (PW-1) was weeping bitterly and she immediately returned back home with her son and asked the prosecutrix as to why she was crying and that prosecutrix (PW-1) disclosed to her that when she was digging the mud in the park, their

neighbour/appellant came there and asked her why she was digging the Crl.A. 1353/2013 Page 2 of 16 mud from there and said that he would show her good mud. Under this pretext, he took her in his lap to the bushes in the park and made her lie down on the grass. She further told the complainant (PW-9) that the accused took off her underwear and also took of his underwear and closed her mouth with his hand and laid down on her and committed wrong act with her and that, in the meantime, two boys came there and they started giving beatings to appellant Mool Chand who ran away from there. The said boys brought the prosecutrix (PW-1) back to her home. Complainant (PW-9) then stated that the prosecutrix (PW-1) was complaining of pain in private parts and stomach and that she disclosed all the facts to her husband (PW-10) after he returned back from his duty and he in turn made a call at 100 number. Police came and took her daughter (PW-1) and husband (PW-10) to the hospital where the prosecutrix was medically examined.

5. On the basis of said complaint, FIR No.2
(Ex.PW15/A) under Sections
IPC was registered against accused at PS Ashok Vihar. The matter was investigated. The accused was arrested. The statement of prosecutrix was recorded under Section 164 Cr.P.C. The case property was sent to FSL. After completion of the investigation and recording of statement of witnesses, the charge sheet was prepared and filed in the Trial Court.

6. Upon committal of this case to the Trial Court, charges for the offence under Sections
(2) (f) IPC were framed against the appellant, however, the accused pleaded not guilty and claimed trial.

7. The prosecution in all examined eighteen witnesses. No evidence was led by the defence. The statement of the accused was recorded under Section 313 Cr.P.C.

8. Mr.Singhal, learned counsel for the appellant, submits that the judgment in order of sentence passed by the Trial Court is contrary to law Crl.A. 1353/2013 Page 3 of 16 and facts on record and on this ground, the appellant deserves to be

acquitted. Learned counsel submits that the two persons who allegedly caught hold of the appellant, after he committed the act, were not examined as witnesses. He also contends that the appellant has been falsely implicated in this case. No injury has come in the MLC of the appellant and thus, the stand of the prosecution that he was nabbed at the spot and beaten by the neighbours, would not stand to be proved.

9. Learned counsel for the appellant further submits that no case under Section 376 (2) (f) IPC is made out as even the medical evidence does not support the fact that the appellant had raped the victim. At best, it would be a case of Section 376 read with Section 511 IPC, i.e. attempt to rape.

10. After some hearing in the matter, learned counsel for the appellant submits that having regard to the totality of the facts and evidence on record and keeping in view that there was no penetration; the appellant did not act in any cruel or unusual manner; and the appellant did not cause any injury to the victim, the appellant would not contest the order on conviction but prays that the sentence may be modified and be also treated as case under Section 376 read with Section 511 IPC.

11. Per contra, learned APP for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The testimony of the child witness is reliable and trustworthy. The child witness was cross-examined at length and there is nothing in the cross- examination which would show that the child witness was either tutored or she was unable or that she was not truthful and reliable witness. Counsel contends that the case of the prosecution is duly supported by the testimony of Master Shailesh (PW-14), another nine year old eye witness being the brother of the victim. Learned counsel for the appellant submits that the testimony of both the eye witnesses (PW-1 and PW-14) stands Crl.A. 1353/2013 Page 4 of 16 duly corroborated by the testimony of their mother (PW-9).

12. It is, thus, contended that there is no infirmity in the judgment and order on sentence passed by the Trial Court. Attention of the court is also drawn to the result of FSL. In the said FSL i.e. the result from DNA Finger Printing Unit, it has

been observed that the alleles from the source of the exhibit 2 (blood sample of accused Mool Chand) are accounted in alleles from the source of exhibit 1f-1 (Microslide) & 1f-2 (Microslide). The Microslides 1f-1 & 1f-2 were prepared from Step 9 - Vaginal Secretion (V) taken from the prosecutrix.

13. We have heard learned counsel for the parties and considered the rival submissions.

14. The case of the prosecution revolves around the testimony of the victim (PW-1), Master Shailesh (PW-14) (brother of the victim) and Smt.Maharaji (PW-9) (mother of the victim). We find the testimony of the victim and her brother to be trustworthy and reliable. The Trial Court has extracted in detail the testimonies of both the child witnesses (PW-1 and PW-14), which were recorded in question-answer form. We also find the testimony of mother of the victim (PW-9) to be reliable and trustworthy, corroborating the statement of the prosecutrix (PW-1).

15. While we do not find it necessary to discuss in detail the testimonies of the public witnesses, police witnesses or formal witnesses. At the same time, it would be useful to reproduce the testimony of Dr.Latika (PW-12) which reads as under:-

"I have been deputed by Ms. BJRM Hospital in place of Dr.Niyati to depose on her behalf as she was proceeded on maternity leave. On 17.08.2011, Dr.Niyati was working as SR Gyane with me in the aforesaid hospital. On that day, prosecutrix was referred by Dr.Vaibhav, CMO, to SR Gynae for her medical examination. In Gynae Department, Dr.Niyati medically the prosectrix and observations made by her on the MLC of the prosecurtix, examined Crl.A. 1353/2013 Page 5 of 16 already Ex.PW-4/A, are from X to X-1 which bears signatures of Dr.Niyati at point C. As per observations made by Dr.Niyati on examination of the prosecutrix, she found that vulval forchette was congested and minimal bleeding was present; Para urethal area was congested, hymen had a fresh small tear with bleeding. Dr.Niyati gave opinion that the findings were suggestive of sexual abuse with trial of penetration which caused hymenal injury and congestion. I cannot say if any samples were taken from the patient as there is no such endorsement on the MLC, however, all the samples which are taken are recorded in the hospital register of our department. she was working with me in the same hospital. I can

identify handwriting and signatures of Dr.Niyati as (Emphasis Supplied) 16. The appellant has already made a statement that he does not wish to contest the matter on merit. However, on examination of the evidence, we are satisfied that the Trial Court has rightly convicted the appellant for the offence committed under Section 363 IPC. We are also unable to accept the submission of learned counsel for the appellant that no case under Section 376 (2) (f) is made out and only a case of Section 376 r/w 511 IPC is made out, in view of the testimony of the prosecutrix (PW-1) and her brother (PW-14) which stand duly corroborated with the testimony of (PW-12) and the medical examination conducted as also the FSL examination and the DNA report.

17. The only issue which arises for our consideration is as to whether the order on sentence is required to be modified in the facts of the present case?.

18. Mr.Singhal has strongly urged before the court that the appellant has already been in incarceration for a period of six years including remission earned by him; his overall jail conduct has been satisfactory and he is also working as ward sahayak. Additionally, at the time of Crl.A. 1353/2013 Page 6 of 16 commission of the offence, he was 21 years of age; belonged to the weaker strata of society and he has to look after his aging parents and sisters. It is also contended that he has not been previously convicted nor involved in any other case and the medical examination of the victim would show that besides the injury on her private parts, there were no other injury on the body of the victim. He did not act in an unusual or cruel manner and thus the order on sentence be modified.

19. It is settled law that while fixing the quantum of sentence of the convict, the courts should strike a balance between the aggravating and mitigating factors and only then, prescribe a punishment commensurate with the culpability of the convict. Recently, a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in Ramjee Lal v. State (Govt. of NCT) Delhi, 2017 SCC OnLine Del 8581 had reduced the sentence of the appellant under Section 376 from rigorous imprisonment for life to rigorous imprisonment for seven years finding (1) no signs of violence; (2) appellant did not act in any unusual or cruel manner; (3) background of impecuniosity; and (4) being a first time offender. While

doing so, the bench dealt with a cornucopia of judicial precedents of this Court and the Apex Court; the relevant portion of which is reproduced in extenso below: 15. Prior to dealing with the present case, we deem it appropriate to revisit the law relating to sentencing in a criminal case.

16. The Supreme Court of India in Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC359was dealing with two appeals, one by the state and the other by the victim of the crime. The offenders therein had been convicted of offences under Sections
read with 114 IPC and sentenced to undergo imprisonment of 10 years and fine of Rs.3,000/-. The High Court had reduced the imprisonment undergone of about 2 years while enhancing the fine to Rs.60,000/- for two reasons: first, one of the the sentence to Crl.A. 1353/2013 Page 7 of 16 law regulates social convicts had appeared in exams of Standard X and second, as they had no criminal antecedents. The Apex Court had allowed the appeal and remanded the matter back to the High Court as it had overlooked the factum of numerous pending criminal cases against the convicts and the fact that one of them had previously breached the conditions of bail. Arijit Pasayat, J., giving the opinion for the bench, observed as under: 7. The interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society. Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed,

the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or Crl.A. 1353/2013 Page 8 of 16 of his crime. results Inevitably committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. (1991) 3 SCC471 9. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

10. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of Crl.A. 1353/2013 Page 9 of 16 in the balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US183:

28. L Ed 2d 711 (1971)]. that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In Dhananjoy Chatterjee v. State of W.B. (1994) 2 SCC220this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

13. Similar view has also been expressed in Ravji v. State of Rajasthan (1996) 2 SCC175 It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant

but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. If for extremely heinous crime of murder perpetrated in a very brutal manner Crl.A. 1353/2013 Page 10 of 16 without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. In State of M.P. v. Ghanshyam Singh (2003) 8 SCC13 Surjit Singh v. Nahara Ram (2004) 6 SCC513and State of M.P. v. Munna Choubey (2005) 2 SCC710the position was again highlighted. (Emphasis Supplied) 17. The Apex Court in Dinesh v. State of Rajasthan, (2006) 3 SCC771 while granting minimum statutory sentence to the appellant under Section 376(2)(f) IPC of ten years as neither the Trial Court and the High Court had stated any reason, observed as under: 12. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed sentence commensurate with the gravity of the offence. The courts must hear the loud cry for justice by society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. impose a to 18. It is worthwhile to notice the observations of a (Emphasis Supplied) Crl.A. 1353/2013 Page 11 of 16 coordinate bench of this Court in Khem Chand & Ors. v. State of Delhi, ILR (2008) Supp (5) Delhi 92, which while dealing with cases of statutory rape of minors under Section

376 had summarized the principles and factors which may be taken into account while assessing the appropriate sentence. The relevant portion is as under: 7. Before proceeding with the evaluation of the 12 appeals on merits, the principles and factors emerging from Judicial pronouncements, which are relevant in the matter of choice of sentence or reprieve in the sentence awarded are enumerated below for facility of reference. These are the factors which are, or may be taken into account by the Court while assessing as to what could be an appropriate sentence in a given case. i. Criminal and the crime are both important for the purposes of sentence. Bachan Singh Vs. State of Punjab (1980) 2 SCC684 ii. Manner of commission of the crime being with meticulous planning or one on the spur of the moment; iii. Violence, If any, accompanying the crime whether injuries suffered were serious and required extensive treatment or have caused any permanent damage to the child bearing capacity or otherwise iv. Whether the offender or accused was in a position of fiduciary trust or exploited a social or family relationship; v. State of the victim, impact of the crime on the victim, vi. The antecedents of the accused, his age, whether a first time offender or repeat offender, possibility of recidivism. vii. Social backwardness or offender being a poor, illiterate labourer not found to be adequate reason by Courts. (State of M.P Vs. Munna Choubey & anr. 2005(2) SCC710and State of M.P Vs. Babbu Barkare @ Dalap Singh (2005) 5 SCC413 viii. Passage of time since offence committed by itself considered inadequate reasons for reprieve. (Urmila (minor) Vs. Raju & Anr., (2005) 12 scc 366. Crl.A. 1353/2013 Page 12 of 16 ix. Rape victim's marriage or rehabilitation may be considered as a mitigating factor. x. The Supreme Court in a number of decisions Dinesh @ Buddha Vs. State of Rajasthan (2006) 3 SCC771 State of Karnataka Vs. Krishnappa (2000) 4 SCC75 Bantu @ Naresh Giri Vs. State of M.P (2001) 9 SCC615and State of M.P Vs. Santosh Kumar (2006) 6 SCC1where the victims were below the age of 12 years and rape had also been committed with some injuries, has chosen the award of minimum sentence. to uphold 19. This Court in Mohd. Rafiq v. State of NCT of Delhi, 162 (2009) DLT551 was faced with a situation wherein the appellant had been convicted of offences under Sections

IPC for the rape of a minor girl and awarded sentence of rigorous imprisonment of 12 years coupled with fine of Rs.10,000/- for offence under Section 376 without

assigning any reasons for the same. By a detailed judgment passed by one of us (G.S. Sistani, J.), while sitting single, finding that the Trial Court had failed to assign reasons for a harsh punishment, had reduced the punishment to the statutory minimum of rigorous imprisonment of 10 years.

20. In Nandan v. State, MANU/DE/2154/2015, a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in was dealing with an appeal, where the appellant had been convicted for the rape of a six year old was punished with Rigorous Imprisonment for actual life with fine of Rs.25,000/- (with no remission). This Court considering the mitigating factors that the appellant had two children and was taking care of his old parents and wife in addition of belonging to a background of impecuniosity, reduced the sentence to that of rigorous imprisonment of 14 years. While doing so, the bench rejected the proposition that retribution plays a role in sentencing in a civilized society and observed as under: 12. Sentence is to be imposed keeping in mind the nature of the offence and the manner in which the offence has been committed. Primarily it is to be borne in mind that sentencing for any offence has a social goal. The fundamental purpose of imposition of sentence is based Crl.A. 1353/2013 Page 13 of 16 on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim. 21. Furthermore we believe that being a civilised society -- a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the life imprisonment would not arise; Rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While

punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an opinion to award the sentence which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society. The Courts would draw a balance-sheet and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. In other words, the doctrine of proportionality has a valuable application to the sentencing policy under Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused aggravating true, the it is of Crl.A. 1353/2013 Page 14 of 16 deserves keeping in view the impact on the society at large. conspectus of the aforegoing (Emphasis Supplied) judicial 21. From pronouncements, it is clear that sentencing vests great discretion in the hands of the judge, which is to be exercised in a sound manner while balancing the aggravating and mitigating circumstances of a case. There cannot be any uniform policy which may be resorted to as sentencing involves a comprehensive view of both the crime and the criminal allowing for a myriad situations or questions which may fall for the Court. All the while the doctrine of proportionality must be adhered as both deficient and excessive punishments undermine the criminal justice system. 20. Accordingly, the quantum of the punishment of the appellant is also to be decided on the basis of his culpability. For a person convicted under Section 376 (2) (f) [prior to the Criminal Law (Amendment) Act, 2013]., the minimum punishment provided is ten years and the maximum being for life. The Trial Court has imposed the harshest penalty under law and the only reason mentioned in the order on sentence dated 29.06.2013 is that the victim was a minor girl of 6-7 years. On the other hand, the mitigating factors weighing in the favour of the appellant are: (i) No violence was involved in the offence; (ii) Appellant did not act in any unusual or cruel manner; (iii) Appellant belongs to the weaker strata of society; (iv) The appellant was the sole bread earner of his family and has persons dependent upon him; (v) The appellant was a first time offender and no other cases are pending against him; and (vi) The

conduct of the appellant in Jail has been satisfactory.

21. Accordingly, we allow the appeal in part. We uphold the order of conviction under Section 363 and 376(2)(f) IPC and modify the order on Crl.A. 1353/2013 Page 15 of 16 sentence only to the extent that the appellant shall be sentenced to rigorous imprisonment for ten years for the offence under Section 376(2)(f). The order with regard to fine remains unchanged. All sentences to run concurrently.

22. The appeal is disposed of.

23. Crl.M.B. 475/2017 seeking suspension of sentence is dismissed. G.S.SISTANI, J.

MAY16 2017 // /aa REKHA PALLI, J.