

Mithu Rai Vs. State

Mithu Rai Vs. State

SooperKanoon Citation : sooperkanoon.com/39891

Court : Delhi

Decided On : Feb-10-2015

Judge : Sunita Gupta

Appellant : Mithu Rai

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

10. h February, 2015 + CRL.A. 244/2011 MITHU RAI Through: Appellant Mr.D.B.Yadav, Advocate versus STATE Through: Respondent Ms.Fizani Hussain, APP for the State CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 24.09.2010 and order on sentence dated 11.10.2010 passed by the learned Additional Sessions Judge, Rohini, Delhi in Session Case No.191/09 arising out of FIR No.447/07, P.S.Adarsh Nagar wherein the appellant was convicted u/s 376(2)(f) of Indian Penal Code, 1860 (hereinafter referred as IPC) and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.1,000/-, in default, to undergo simple imprisonment for 60 days. He was granted benefit of Section 428 of the Code of Criminal Procedure, 1973.

2. The victim in the instant case is a minor child aged about 5 years at the time of incident, who was subjected to rape by the accused. As per the prosecution case, the accused was working in Pasha Ki Dairy where the victim along with her parents was also residing. On the horrific day of 12th September, 2007, after taking meal, the prosecutrix had gone to play in the street along with other children at about 10:00 p.m. when she was taken by the accused who gave her some money, put his finger in her private part and thereafter committed rape on her. She informed this fact to her elder sister Laxmi. Police was informed on which DD25 Ex.PW8/A was recorded and the same was handed over to SI Ram Kumar for further action. PW12-SI Ram Kumar along with Constable Ram Karan went to the spot where PW9-W/ASI Pushpa reached the spot and the DD was handed over to her for further investigation. W/ASI Pushpa met the prosecutrix along with her sister Laxmi. Thereafter the prosecutrix was taken along with her sister to BJRM Hospital for medical examination where she was medically examined. Doctor handed over three sealed parcels containing vaginal swab, perennial swab, frock of the prosecutrix which were seized vide memo Ex.PW9/A. X-ray of prosecutrix was also got conducted for bone age estimation. After collecting the MLC of the prosecutrix, they returned to the house of prosecutrix. W/ASI recorded the statement of Laxmi Ex.PW2/A from which it was revealed that the accused Mithu Rai had committed rape upon her who was residing as tenant in the same house bearing No.205/10, Pasha Ki Dairy, Village Azadpur, Delhi. On the pointing out of prosecutrix, accused was apprehended. Rukka Ex.PW9/B was prepared on the basis of which FIR44707 u/s 376 IPC was registered. Site plan Ex.PW9/X was prepared. PW Laxmi handed over one blood stained bed sheet and one blood stained washed underwear of prosecutrix which were seized vide memo Ex.PW2/D. Accused was arrested vide memo Ex.PW2/B. On the next day, he was taken to hospital where he was medically examined. The undergarment of accused, blood stained gauze of accused and his blood sample were taken. On 14th September, 2007 prosecutrix was also taken to BJRM Hospital and her blood sample was taken. Statement of prosecutrix u/s 164 Cr.P.C. was got recorded. During the course of investigation exhibits were sent to FSL. After completing investigation, charge sheet was submitted against the accused.

3. Charge for offence u/s 376/2 (f) IPC was framed against him to which he pleaded not guilty and claimed trial.
4. In order to substantiate its case, prosecution in all examined 14 witnesses. All the incriminating evidence appearing against the accused was put to him while recording his statement u/s 313 Cr.P.C. wherein he denied the case of prosecution and alleged his false implication in this case. It was alleged that he used to realise rent from the tenants on behalf of owner of Pasha ki Dairy including the father of the prosecutrix, who never paid rent to him despite repeated requests and got this false case registered against him. Since this was a false case, therefore, even the parents of the prosecutrix did not turn up for evidence. In support of his defence, he examined 4 witnesses.
5. After meticulously examining the evidence led by the parties, the learned Trial Court convicted the appellant and sentenced him as mentioned hereinbefore.
6. Failing aggrieved, present appeal has been preferred.
7. Assailing the findings of learned Additional Sessions Judge, it was submitted by Sh. D.B. Yadav, Advocate that the impugned judgment suffers from several infirmities. The material witnesses, viz, parents of the prosecutrix and Lal Bahdur were not examined by the prosecution. Father of the prosecutrix was a material witness as according to PW Laxmi, it was he who had washed the underwear of the prosecutrix but he was not examined. Similarly, according to PW Laxmi, she sent Lal Bahadur to police station to inform about the incident and he also accompanied the prosecutrix to hospital but for reasons best known to prosecution, he was not examined. As such, adverse inference has to be drawn. The reason for non-appearance of parents of the prosecutrix to substantiate the case of prosecution is attributed to the fact that they never paid the rent which was being collected by the accused on behalf of owner of the premises and, therefore, they got him falsely implicated in this case. Even otherwise, the appellant is in jail for the last more than 7 years, as such, a liberal view be taken.
8. Rebutting the submission of the learned counsel for the appellant, Ms. Fizani Hussain, learned Additional Public Prosecutor for the State submitted that the

impugned judgment does not call for any interference. The testimony of the prosecutrix herself is sufficient to sustain the conviction. Same finds substantial corroboration from her sister PW2 Laxmi. Besides that medical and scientific evidence also proves the case of prosecution. The plea taken by the accused for his false implication on the ground that the parents of the prosecutrix never paid rent and got him falsely implicated is an afterthought inasmuch as no such suggestion was given either to the prosecutrix or to her sister. None of the defence witnesses examined by the accused produced any rent receipt to show that they used to pay rent to the accused. Moreover, there is no evidence that the accused used to collect rent. Even the owner of the dairy has not been examined in order to prove that the accused was authorized to collect rent on his behalf or that the parents of the complainant were defaulting in payment of rent. Under the circumstances, it was submitted that there is no merit in the appeal and the same deserves to be dismissed.

9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

10. Admittedly, the prosecution case is based on the testimony of victim child who was approximately five years of age at the time of incident, which stands proved from the testimony of PW2 Laxmi. Moreover, when the prosecutrix was taken to hospital, her age was given as four years. She was produced for her bone age estimation. PW4-Dr. Shipra Rampal examined the X-ray plate of the prosecutrix and gave her report Ex.PW4/A opining that estimated bone age of the patient was between 5-6 years. Even accused has not disputed this fact that the age of the prosecutrix was between 5-6 years on the date of incident.

11. The question for consideration, therefore, is as to whether a conviction can be recorded on the sole testimony of a child witness or not.

12. The conviction on the sole evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of evidence is convinced about the quality and reliability of the same. It should be accepted albeit with circumspection.

13. A common sense approach was advocated by the Court in the early case of *Mohamed Sugul Esa v. The King*, AIR (33) 1946 PC3, where it was observed: "Once there is admissible evidence a court can act upon it; corroboration, unless required by a statute, goes only to the weight and value of the evidence. It is a sound rule not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

14. Later in *Rameshwar Kalyan Singh v. State of Rajasthan*, AIR 1952 SC54 the Court held:

The rule, which according to cases has hardened into one of law, is not that corroboration is essential before there can be a conviction, but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

15. This issue was also dealt by the Apex Court in *Virendra@ Buddhu & Anr v. State of UP*, (2008) 16 SCC582 Relevant paras are 18 to 21 and the same are reproduced as under:

18. The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that

118. Who may testify- All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind.

19. A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of

prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

20. In *Dattu Ramrao Sakhare v. State of Maharashtra*, (1997) 5 SCC341 it was held as follows: (SCC p. 343, para 5)

5. ...A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

21. Subsequently, in the case of *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*, 2004 Cri LJ19 wherein one of us (Dr. Arijit Pasayat) was a member the bench held that:

the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.

16. The legal position which can be culled out from the aforesaid decisions is that before recording conviction on the solitary testimony of a child witness, i.e., prosecutrix herein, the court has to ensure that she is a reliable witness. If her testimony is found to be trustworthy and reliable then conviction can be recorded on her sole testimony.

17. Reverting to the case in hand, since the prosecutrix was only aged about 5 years, as such, learned Additional Sessions Judge put various questions to her in order to ascertain her capacity to understand the questions and to give coherent answers. After satisfying himself, her statement was recorded without oath as she was below 12 years of age. The prosecutrix deposed that the accused was known to her from earlier as he was working with Bhainswala near her house. He called her when she was playing with other children and took her to his house where he gave her some money. Thereafter, he put his finger in her private part as a result of which blood started oozing out, thereafter accused removed his underwear and also removed his clothes and then committed rape on her. He then gave her some money. She came home and informed this fact to her sister Laxmi. She was taken to hospital where she was medically examined. At the time of incident she was wearing a frock and underwear. The frock was sealed by the doctor at the time of her medical examination. She identified her frock Ex.P1 and underwear Ex.P2 to be the same which she was wearing at the time of incident. It is also stated that her statement was also recorded by the Magistrate. I see absolutely no reason to disbelieve the testimony of the prosecutrix who withstood the test of cross examination. Although no corroboration is required but the same is available in abundance.

18. The factum of recording her statement u/s 164 Cr.P.C. by a Metropolitan Magistrate finds corroboration from the testimony of PW9-W/ASI Pushpa who moved an application Ex.PW9/E for recording statement of victim u/s 164 Cr.P.C. which was assigned to Sh. Vijay Shankar, Metropolitan Magistrate. PW11-Sh. Vijay Shankar, Metropolitan Magistrate proved the statement of prosecutrix Ex.PW11/A recorded by him. He further deposed that he had recorded her statement after satisfying himself regarding her capability and mental attitude towards narration of facts. He also satisfied himself that she was making the statement voluntarily without any force, pressure or threat. He denied the suggestion that sister of the prosecutrix was also present in the chamber when her statement was recorded or that prosecutrix was pressurised to make statement before him.

19. A perusal of the statement u/s 164 Cr.P.C. reveals that it was a very short statement and is to the following effect:

Mithu ne bulaya, haath daala mere me. Peshaab karne wala dala. Do rupaiye ka sikka diya. Fir gandaa baat kiya. Fir khoon aaya to chhod diya. Aur kuchh nahi kehna.

20. Although the statement is very short but narrates the entire incident as to how she was subjected to rape by the accused. As such, the testimony of prosecutrix finds substantial corroboration from the statement recorded by learned Metropolitan Magistrate which was recorded at the earliest available opportunity.

21. Further, PW2-Kumari Laxmi stated that when she returned to her house on 12th September, 2007 after finishing her work, she found her sister present at the house. She noticed blood oozing out from her vagina. Thereupon the prosecutrix informed her that Mithu who was working at Pasha Ki Dairy, Village Azadpur situated on the ground floor took her to his room and committed rape on her. She also told her that Mithu called her on the pretext of giving Rs.2/- to her. Prosecutrix was carrying her underwear in her hand at that time and the same was washed by her father. She told this fact to one Lal Bahadur who was residing near her house. He informed the police. Thereafter police from P.S Adarsh Nagar reached her house. Her sister was taken to BJRM hospital by the police where she was medically examined. The information given by the prosecutrix about the incident of rape by the accused immediately after the incident to PW2 Laxmi falls in the category of res gestae.

22. The factum of making the complaint and the terms thereof become relevant as subsequent conduct. Such a conduct is relevant under Section 157 read with Section 8 of the Indian Evidence Act. In Emperor vs. Phagunia Bhuran, AIR1926 Pat. 58, it was observed as under:- If the girl went to her relatives straight after the occurrence and complained on her own initiative, there is no doubt that her conduct would have a direct bearing upon and connection with the occurrence itself.

23. In Rameshwar Kalyan Singh (supra) also, it was observed that where the raped girl instinctively ran home to her mother, but not finding her there, she went to sleep and when the mother returned four hours later, the girl told her what had happened, the statement made to the mother fell within the ambit of Section 157 read with Section 8 illustration (J) of the Evidence Act.

24. Nagam Gangadhar vs. State, 1998 CrL L.J.

2220 considered the similar situation, where a child of four years was raped. Honble Apex Court observed as under:

It is then contented that PW3 is a child witness and no importance can be attached to that evidence. It is true that the evidence of PW3 cannot be given the same weight as a grown up victim in a case of rape, the reason being that she is aged four years at the time of occurrence. However, she appears to have communicated to her parents that the revision petitioner has committed an act due to which she was getting pain in her private part. PW-1 as well as PW-2 have sworn to the fact that PW-3 disclosed the said act, even if the testimony of PW-3 is to be ignored, the circumstances set out supra are, in view of Honble Apex Court, sufficient to bring home the guilt of the revision-petitioner.

25. In Syed Pasha vs. State of Karnataka, 2004 Cr. L.J.

4123 also the child informed her mother about the incident and the person, who had committed rape upon her. It was held this information was admissible in evidence and it points out to the guilt of the accused.

26. Similar view was taken by this Court in, Nannu Gupta @ Bablu v. State, 2010 II AD (Delhi)117 and in Hari Om v. State 2010 Cr.L.J.1281, where it was held that previous statement of prosecutrix are admissible in evidence under Section 157 of the Evidence Act and this proposition of law was recognized by Honble Apex Court in Madan Lal vs. State of J&K, AIR 1998 SC386 where statement made by the prosecutrix to her mother soon after the incident was accepted to be corroborative piece of evidence.

27. Applying the ratio of the aforesaid cases to the evidence of PW2 Laxmi, there is no hesitation to arrive at the conclusion that her statement indicating that the prosecutrix told her immediately after the incident that she was subjected to rape by accused is admissible under Section 6 of the Evidence Act.

28. As per the version of PW2-Laxmi, she informed about the commission of this heinous act by the accused to one Lal Bahadur who was residing near her house. He informed the police. Thereafter police machinery swung into action. Although PW Lal Bahadur should have been examined but his non-examination is not fatal as the fact that the information was given by Lal Bahadur stands proved from DD No.25A, Ex.PW8/A which was recorded on the information given by Lal Bahadur regarding commission of rape of prosecutrix and thereafter police machinery swung into action.

29. According to PW3 Dr. Pooja, the patient was brought to hospital with alleged history of rape on 12.09.2007. Initially the patient was examined by the CMO and thereafter she was referred to Sr.Gynae for further opinion and was examined by Dr. Indira, Sr. Gynae. As per the MLC, there was no external injury on face, neck, breast, abdomen, thigh, back, upper and lower limb. However, hymen was torn, margins were fresh and was not bleeding at the time of examination. Slight bleeding was present on perineal and vulval region. There was no fresh and active bleeding at the time of examination. Vaginal laceration was present which was not bleeding. Swab was taken from perineal and vulval region which was sealed and handed over to the Investigating Officer. Blood stained frock of the patient was also taken, sealed and handed over to the Investigating Officer of the case. As such, the medical evidence substantially corroborates the testimony of the prosecutrix.

30. Accused was also taken to hospital for medical examination. His MLC Ex.PW10/A was prepared according to which there was nothing to suggest that he was incapable to do sexual intercourse.

31. During the course of investigation, the blood stained frock, bed sheet in which the prosecutrix was taken to hospital, her washed under wear as well as swab, blood sample, undergarments of accused, blood stained gauze and his blood

sample were sent to FSL which were examined by Dr.Rajender Kumar, Sr. Scientific Officer, Biology, FSL, Delhi who gave his report dated 14th August, 2008. As per the report, blood was detected on frock, underwear, bed sheet of the prosecutrix. Human semen was also detected on her underwear as well as on the underwear of the accused. Although as per the report of Biology Division, the species of origin could not be given regarding the semen stains but detection of blood on the frock, underwear and bed sheet of the prosecutrix coupled with semen on the underwear of the prosecutrix and accused are another corroborating piece of evidence.

32. There is absolutely no explanation or suggestion to any of the prosecution witnesses by the accused as to how blood was coming out from the private parts of the prosecutrix or how the hymen was torn and fresh injuries were found on her private parts as deposed by the doctor. Accused has also failed to explain as to how semen was detected on her under wear as well as his underwear. Similarly there is no explanation regarding presence of blood on the clothes of the prosecutrix 33. In Nannu Gupta (supra), semen was found on the underwear of the accused. There was no explanation from the accused as to how semen came on his underwear, therefore, it was held that the inference is that semen came on his underwear when he attempted to commit rape with the prosecutrix. In the instant case, semen was detected not only on the underwear of the accused but also on prosecutrix and no explanation has been given by the accused for presence of semen on his and victims underwear. Therefore, it is another strong corroborative piece of evidence against the accused.

34. As such, from the testimony of the prosecutrix coupled with the medical evidence and the scientific evidence, the prosecution had succeeding in establishing its case beyond reasonable doubt. Although father or mother of the prosecutrix have not been examined by the prosecution but it has come on record that none of them were eye witness to the incident. Mother of the prosecutrix had gone out for filling gas cylinder whereas even the father was not an eyewitness, therefore, for non-examination of these witnesses, no adverse inference can be drawn against the prosecution.

35. The accused has taken a plea that he has been falsely implicated in this case as the parents of the prosecutrix never paid rent to him on his repeated request. In support of his defence, he examined four witnesses, however, it is pertinent to note that the best person to admit or deny this fact was the prosecutrix or her sister Laxmi but no suggestion was given to them. It was only at the fag end of the trial that a suggestion to this effect was given to PW14-Head Constable Ram Karan who rightly could not admit or deny this suggestion. As such, this plea taken by the accused seems to be an afterthought. Moreover, neither the accused nor any other witness examined by him gave the name of the owner of the premises nor the owner was examined by the accused to prove that he had either authorized the accused to collect rent on his behalf or that there was any default on the part of the parents of the complainant to pay rent. At any rate, even if it is assumed that there was any default on the part of the parents of the complainant to pay rent, it was most unlikely that they would level false allegations against the accused by putting the honour and chastity of the minor child at stake.

36. Honble Supreme Court in *Bharwada Bhoqinbhai Hirjibhai vs. State of Gujrat*, AIR1983C753 had noticed peculiar conditions and circumstances in which a girl or woman, who happens to be victim of rape, in Indian conditions would find herself and so will be reluctant to disclose such incident to anyone and it is observed as under:

Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or woman in India make false allegations of sexual assault... The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibility from amongst the urban elites. Because:

(1) A girl or a woman in the tradition bound nonpermissible Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

(2) She would be conscious of the danger of being ostracised by the Society or being looked down upon by the society including by her own family members, relatives, friends and neighbours.

(3) She would have to brave the whole world.

(4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.

(5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.

(6) It would almost invariably result in mental torture and suffering to herself.

(7) The fear of being taunted by others will always haunt her.

(8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame and account of the upbringing in a tradition bound society where by and large sex is taboo.

(9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.

(10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not want to avoid publicity on account of fear of social stigma on the family name and family honour.

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence.

(12) The reluctance to face interrogation by the investigating agency, to face the Court, cross-examination by counsel for the culprit, and the risk of being disbelieved, act as deterrent.

37. In this regard, observations made by this Court in *Hari Om* (supra) may be reproduced with advantage:

Prosecutrix being a young girl aged about 7 years at the time of incident, it is not likely that her parents would have implicated the accused in a false case of rape of their daughter, conscious as they would be that reporting of such a matter to police, particularly, when parents of prosecutrix as well as the accused were living in the jhuggies situated in the same locality, was bound to expose their daughter to scrutiny and questions not only by the police and the Court, but also by their neighbour and relatives. They could not have been ignorant of the fact that they may even have difficulty in finding a suitable match for their daughter once it is known that she has been subjected to rape in her childhood. Therefore, if they, despite realising these consequences do report the matter to police. It would be only if what they were reporting was absolutely true and correct. In fact, some of the parents even refrain from reporting such incident lest their child not face embarrassment on account of incident becoming public and her marriage being jeopardised on account of prospective in-laws becoming aware of the incident, at the time of her marriage. The parents of prosecutrix knew that if they report the matter to the police, they will have to take their child first to police station, then to the hospital and ultimately in the Court, and the child will be made to repeat the worst incident of her life at every place at considerable discomfort and embarrassment to her. Therefore, unless the incident of this nature actually happened with their child, no parents would take such step.

38. Even in *Radhu vs. State of Madhya Pradesh*, (2017) 12 SCC57 Honble Apex Court observed that it is unlikely that child of eight or nine years of age can even be tutored to make allegations of rape by a person otherwise well known to her and then repeat those allegations before police, Magistrate, doctor and then during trial.

39. The result of the aforesaid discussion is that the defence taken by the accused has no legs to stand. On the other hand, testimony of prosecutrix cannot be brushed aside on the flimsy plea raised by the accused. In view of the settled legal proposition, testimony of prosecutrix herself is sufficient to bring home the guilt of the accused which, in the instant case, finds corroboration from the narration of entire incident to her sister, medical evidence as well as scientific evidence. As such, the learned trial Court rightly convicted the appellant by holding that

prosecution has succeeded in establishing its case beyond reasonable doubt.

40. Coming to the quantum of sentence, the victim was only five years old child when this gruesome and abhorring act of committing rape was committed by the accused. Such an act leaves a permanent scar on the personality of the child, inhibiting growth and development. It instils a feeling of fear, insecurity and a brooding sense of shame and guilt for no fault of the victim. An author has aptly narrated the inner turmoil of victims and repeat victims of sex abuse or child rape in the following words:

Lost innocence Looking back on a time and place Seeing a child's innocent face
Knowing that things aren't as they appear, For inside she cries silent tears Deep
inside she is filled with pain She feels dirty and full of shame Innocence lost at a
very young age Locked this child in a pain filled cage There is no freedom of
escape From the fact this child was raped While the guilty man is roaming free
This child is sentenced to eternity Eternity locked away with all this shame She
can't help but feel that she was to blame Even though common sense says it was
not her fault She can't seem to help from having these thoughts What it's keep
running through her mind She keeps going back to those moments in time If there
isn't something different she could have done Why didn't she scream or at least try
to run Fear kept her frozen to the spot While this grown man did what he should
have not Shame and fear made her keep the silence Kept her telling anyone about
the violence The thing that is shocking beyond belief Is that this child could not get
any relief The same thing happened again and again The first one was just how it
began More than one man did his worst None of them caring about the child they
hurt After the first time was it easy to tell Was it her pain and shame they could
smell With every touch a part of her died Now she is in a prison that has no gate
Every one of them sealing her fate.

41. Honble Supreme Court in *Madan Gopal Kakkad vs. Naval Dubey & Anr.*, (1992) 3 SCC 204 pointed out with deep concern that though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able

to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms.

42. The learned Additional Sessions Judge has awarded the sentence of 10 years which is the minimum sentence prescribed u/s 376 2 (f), as such, there was no discretion vested in the Court to impose a lesser sentence which the facts and circumstances of the case even otherwise did not warrant.

43. Under the circumstances, the appeal being bereft of merit, is dismissed. Trial Court record along with copy of the judgment be sent back. (SUNITA GUPTA)
JUDGE FEBRUARY 10 2015 rs

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com