

Kedar Nath Singh Vs. State

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Court : Delhi

Decided On : Jul-25-1995

Reported in : 1995IVAD(Delhi)83; 1995CriLJ4121; 1995(3)Crimes648

Judge : P.K. Bahri and; J.B. Goel, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 25 of 1991

Appellant : Kedar Nath Singh

Respondent : State

Advocate for Pet/Ap. : Mukesh Kalia and; N.K. Handa, Advs

Judgement :

J.B. Goel, J.

(1) This appeal under Section 374 of Criminal Procedure Code has been filed by the appellant against the judgment of conviction and order of sentence dated 22-1-91 passed by learned Additional Sessions Judge, New Delhi convicting the appellant for offence under Section 376 Indian Penal Code and sentencing him to life imprisonment and a fine of Rs. 5,0001- and in default in payment of fine, further rigorous imprisonment of 2 years.

(2) Briefly stated, the facts giving rise to this case are that the prosecutrix Kumari Bimla aged about 12 years had been residing with her parents at premises No. H-3/3 at Ps defense. Colony, New Delhi. Both her parents along with their other two children had gone to their village Chakrapur in district Nainital on 15-5-87 and returned on 8-6-87, and she was left behind alone under the care of the wife of the accused Kedar Nath Singh, who was living with her family in quarter No. J-1/3, Ps defense Colony, New Delhi. The prosecutrix and the daughter of the accused, Rakhi were students of same school and were friends and visiting the house of each other. During this period of her parents absence in the begining at nights, Kumari Bimla stayed at and slept at the house of the accused. The house consisted of two rooms. In one room the prosecutrix and Rakhi slept on a cot while in the other room the accused along With his other family members slept. On one night while she was so sleeping with Rakhi in one of the rooms during the night, the accused came to her and awakened her from sleep. He made himself lie with the prosecutrix and tried to open the string of her salwar. In the meantime, Sanju (son of accused sleeping in adjoining room) .started taking turns on which the accused went . away to the other room. She continued staying at the house of the accused during nights. After about two nights, while the prosecutrix was sleeping in the room With Rakhi, the accused again came to her and awakened her. On this, Bimla poured down water on her cot from a water bottle kept nearby. At this. the accused got up and went to the kitchen. Due to falling of the said bottle, Rakhi woke up. The prosecutrix told Rakhi that somebody was in the kitchen to which the accused said that it was he who had gone there to drink water. Keeping in view these overtures of the accused, Bimla told Rakhi on the next day that she will not sleep in her house taking the plea that her house was lying vacant and theft might be committed at any time in her house. Thereafter, she along With Rakhi started sleeping at her own house.

(3) On 31-5-87 it was Sunday, Bimla was present in her house alone when at about 3.45 P.M., the accused knocked at the door of her house. She enquired as to who he was, to this the accused replied that his motor cycle had gone out of order and that he had come to take the key of her cycle. As soon as she unbolted the door, the accused immediately entered the house and bolted the door. She had asked him to unbolt the door but he threatened her that in case she cried or

raised an alarm or told anybody, she would be defamed and that she will be beaten by her parents' and also by him. She was frightened and then the accused caught her both hands, laid her on a charpai, untied her salwar, removed his pants and forcibly committed rape on her and due to fear, she could not do anything but kept weeping. The accused had also told her then that she was suffering from leprosy (perhaps meaning leucoderma) and that no body will marry her and that he will get her married to a good boy and her life would be settled and had further asked her not to say anything to anybody. In the meantime, her neighbour Smt. Poorna knocked at the door of the house. He concealed himself in the bathroom. Poorna came in and went towards bathroom, asked her to give her 'neel' but it was not available in the house and Poorna went away. At about 5.30 P.M., the accused went away from her house. Due to fear of defamation, she did not tell about this incident to anybody and even to her parents who returned after 8 or 9 days of this incident.

(4) However, on 20-6-87 in the evening, Smt. Poorna came and told her mother that in their absence, their neighbour Kedar Natt Singh had come to their house. At this, her parents had enquired from Bimla as to what had happened in their absence, and she told everything to them and on the next day her father took her to the police station where she made her statement on which the police registered a case against the accused. During investigation, the- accused was arrested. Both, prosecutrix and accused were medically examined. A 'Chaddar' found from her house was taken into possession. Report of C.F.S.L. was obtained! and the accused was put to trial U/s 376 Indian Penal Code . He pleaded not guilty.

(5) Prosecution had examined in all 15 witnesses including prosecutrix Kumari Bimla (Public Witness -1), her mother Smt. Chander Kala (PW-6) and her father Sh. Sham, Singh (Public Witness -8). Poorna was given up as having been won over. Bimla deposed supporting the. case. She claimed to be 12 years old of that time. The accused in his statement recorded under Section 313 Criminal Procedure Code . had denied the allegations. He took the plea that on 31-5-87 he was at Hissar for an engagement ceremony with his family members. He also took the plea that the father of the prosecutrix had taken loan from him of Rs. 2,000.00 at one time, another sum of Rs. 1050.00 in the month of December .1986, Rs.

1050.00 in the month of January 1987 and again before going to his village, he had further demanded Rs. 2,000.00 on the promise that he will refund after returning from his village but he did not give this amount to him. After Sh. Sham Singh, father of the prosecutrix, returned back from his village, a quarrel had taken place between them when he demanded money back from him. He had refused to repay the same and had threatened that he will involve him in false case and, thereafter, the accused was falsely implicated in this false case. The accused has not led any evidence in his defense.

(6) We have heard Sh. Mukesh Kalia, Id. Amiens Curiae, torn the appellant and Sh. N. K. Handa, learned Additional Standing Counsel for the State.

(7) Learned counsel for the appellant has contended that the finding of conviction of the learned trial court is unreasonable and not justified on the material on record. It is not proved by reliable and independent evidence that such incident had taken place and it is also not proved from the medical evidence that rape had been committed, there is no corroboration of prosecutrix. by any independent evidence and the testimony of the prosecutrix is not reliable And trustworthy and a conviction on the sole testimony of prosecutrix is not justified. In the alternative he has contended that from the material on record, it is not proved that the girl was less than 16 years at the time of the incident and on the other hand medical evidence shows that she would be more than 17 years of age after giving allowance of 2 years, as there is margin of 2 years in age determined medically, and from the material on record, it appears that the prosecutrix was a consenting party and so no offence under Section 376 Indian Penal Code is made out. He has also contended that Smt. Poorna was a material witness, and her non-examination is fatal to the prosecution case. He has further contended that there was unreasonable and unexplained delay in lodging Fir which also casts serious doubts on the prosecution case. Lastly he has contended that the sentence awarded is too harsh and excessive as besides awarding the maximum sentence of life imprisonment, provided in law, heavy fine has been imposed, both are not justified.

(8) Learned counsel for the State has: contended that it is proved from, the testimony of prosecutrix, her parents and other material on record that she was about 12 years old and her date of birth as recorded in the school records' as 24-9-75 is duly proved. There is no reason to doubt the correctness of two school records as this record pertains to period long before the present controversy arose and that medical evidence also does not contradict this if 2 years margin is taken on lower side, in any case the medical evidence cannot be preferred to other direct evidence. He has further con- tended that from the material on record it is not proved that the prosecutrix was a consenting party. In any case, the content was immaterial as she was only 12 years old at the time of occurrence. Regarding delay in lodging Fir, he has contended the the delay has been explained from the circumstances, the delay was not intentional or malafide but because of the peculiar circumstances which have been explained, and there is no reason to disbelieve the young girl. He urged that Poorna was won over by the accused and so was given up, as statement to this effect was made by Id Pp on 4-8-1988. Her non-examination is of no consequence. He has further contended that the accused had taken specific place of alibi and of having advanced loans to her father which have not been proved He further contended that no corroboration is required to base conviction as the sole testimony of the prosecutrix is trustworthy and sufficient. Lastly he has contended that the accused has betrayed the trust of the parents of the prosecutrix and misused his position and confidence as father of the friend of the prosecutrix and he deserved to be severely punished and the sentence in the circumstances is justified.

(9) We have considered these contentions, perused the impugned judgment and order and the material on record.

(10) Learned counsel for the appellant has laid great stress on the proposition that the testimony of the prosecutrix required corroboration and, as no independent corroboration is available, conviction could not be based on. this case.

(11) The law regarding nature and standard of proof required to sustain conviction in a case of sexual offence and whether and when corroboration is required to base conviction on the sole testimony of the victim of sexual assault, has been

reiterated by the Supreme Court in two recent cases. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* : 1983 CriLJ1096 it has been observed as under :

'On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding.if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration.'

(12) Again in *State of Maharashtra v. Chandra prakash Kewalchand Jain etc.* : 1990 CriLJ889 the Court laid down the law thus :

'If a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclosed that the procedure does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubts in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness.....'

and further observed that

'ORDINARILY, the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation'.

The Supreme Court in *Bharwada Bhognibhai Hirjibhai* : 1983 CriLJ1096 has also 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 possibly from amongst the urban elites. Because :

(1) A girl or a woman in the tradition bound non-permissive 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 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 over-powered by a feeling of shame on 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 women would also more often than not want to avoid publicity on account of the 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, to face the cross examination by counsel for the culprit, and the risk of being disbelieved, act as deterrent.'

And then it has been laid down as under :-

'If the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities-factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having leveled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune.' Iml. 5'

(13) The observations made in this authority have been referred to with approval in Chander Prakash Kewal Chand Jain's (Supra). Thus, it cannot be said that corroboration of the prosecutrix is necessary as a matter of law to base conviction.

(14) The evidence of the prosecutrix is, thus, to be evaluated keeping in view these principles and circumstances of the case.

(15) Before coming to the case on merit, objections regarding age of the girl, non-examination of Poorna and delay in lodging the Fir, may be taken up first.

(16) Learned counsel for the appellant has very strenuously contested the finding of learned trial court on the question of age of the girl. According to him the

testimony of the victim (Public Witness -1-), her mother (Public Witness -6) and father (Public Witness -8) are inconsistent to each other and to school record; on the other hand, medical evidence shows that she would be over 17 years old at the time of the occurrence after taking into consideration the margin of 2 years in such medical evidence. Thus he stressed his alternate plea of her being a consenting party.

(17) Prosecutrix Bimla appeared as Public Witness -1-. She has not stated in her statement-in-chief about her date of birth or age but has deposed that she was studying in 6th class at that time. In the cross examination she has stated that her age was 12 years at the time of occurrence but could not tell her age when her statement was recorded on 4-8-88. She was also asked about year of birth of her brother which also she could not tell. However, she stated that he would be 4 years old on next 13 August. It might be that she was unable to tell the years of her birth and of her brother either because she did not remember or she might have been confused in Court atmosphere. There is no suggestion that she would be 16 years or more than 12 years of age at the time of occurrence. It is also not disputed and it is also proved from school records that she was a student of 6th class at the time of occurrence. Her mother Smt. Chander Kala (Public Witness -6) has deposed that she had 3 children, Bimla was the eldest and 12 years old on 31-5-1987. She also could not tell the date of birth of her daughter and stated that she was illiterate. She also had deposed that her daughter was studying in 6th class and was promoted to 7th class on 31-5-87. Nothing was suggested or elicited from her on this aspect, except a bald suggestion that Bimla was above 19 years old, which she denied. Being illiterate, she may not know or remember the date of birth of her daughter but even illiterate persons know their ages and of their children by years. No other material has been brought on record in her cross-examination to discredit her testimony. We do not find any valid ground to disbelieve her.

(18) PW-8 Sh. Sham Singh is the father of the girl. He has deposed that he was married to Public Witness -6 in the year 1971, Bimla was his eldest child and was born, after 3 years of his marriage, on 26-9-74. He has further deposed that she was studying in Nagar Nigam Prathamik Uch Madhamik Vidyalaya, Andrews Ganj

and at the time of her admission in the school, he had given her date of birth. In cross examination, he has given date of birth of his two other children as 27-7-82 and 13-8-84. But no specific cross examination has been made about his assertion regarding year of his marriage or about date of birth or age of Bimla. There is no reason to disbelieve him except one circumstance that according to two school records, her date of birth is 24-9-75 whereas he has given it as 26-9-74. This could be due to accidental slip or error of memory as documentary proof is based on his own statement made long ago which is more reliable than his oral testimony now. If it is taken that he was married in the year 1971 to which there is no challenge, in that case, Bimla would be less than 16 years old at the time of occurrence on 31-5-87. Even if the date is taken as 26-9-74, her age on 31-5-87 would be less than 13 years.

(19) PW-12, Smt. Tulsi Rani, Principal, M. C. Primary School has deposed that Bimla was admitted in that school in Class I on 7-5-81 and in school record-her date of birth was 24-9-75. She has produced from the original records' available with her, copies of application for admission and affidavit of her father and of admission register of school as Exhibits Public Witness -12/A, Public Witness -12/B and PW-12/C respectively. She has also deposed that admission register is duly maintained in the school in regular course. 'Correctness of this school record, is not disputed in cross examination. This record is maintained in regular course of school business. In the circumstances, its correctness cannot be doubted.

(20) PW-10 Mrs. Savitri Devi, principal of Government Girls Secondary School, Andrews Ganj, New Delhi had proved from the school records brought by her that Bimla was admitted in her school in 6th class on 5-5-86 at Serial No. 4020 of the admission register and her date of birth is 24-9-75 which was based on school leaving certificate of Mcd Primary School, Andrews Ganj, New Delhi. She has proved a copy of entry in admission register (Ex. PW-10/B). She has not been cross examined at all. She has, thus, corroborated the testimony of Public Witness -12. Thus, the correctness of exhibits Public Witness -10/B and Public Witness -12/A, B and C remains unchallenged. These documents are ante litem motam and were in existence long before the controversy in question arose. These are relevant and admissible in evidence; as held in Umesh Chander V. State of

Rajasthan : [1982]3SCR583 and Mohd. Iqram Hussain V. State of U.P. : 1964 CriLJ590 and Harpal Singh V. State of H. P. : 1981 CriLJ1 (6).

(21) Statements of Public Witness -1. Public Witness -6 and Public Witness -8' Sh. Sham Singh, father of the girl, thus, have been corroborated by these documents. They have been believed by the learned trial court. However, learned counsel for the appellant has contended that the radiologist in his report Public Witness -13/A, has given her age between 14-9 to 15-8 years and giving allowance of 2 years on higher side, her age would be more than 16 years. Public Witness -13 in his statement in Court and in his report has not given any reason for this opinion. Expert opinion in the absence of reason has no value. In any case, such margin will depend on the conditions and circumstances of each individual. Learned counsel has not elicited any information in cross-examination of Public Witness -13, if the margin of 2 years could be on higher side in this particular case. The Radiologist has already taken a margin of one year in assessing the age between 14-9 to 15-8 years and so further margin would not be justified. Also the margin of 2 years could be on higher side as well as on the lower side depending on various considerations of individual. If allowance of 2 years is given on the lower side. in that case her age would be 12 1/3 years at the time of occurrence. This also corroborates the testimony of Public Witness -1, Public Witness -6, Public Witness -8 and accords with the documentary evidence produced on record. In these circumstances, from the medical evidence, it cannot be said that the victim was more than 16 years old at the relevant time. Finding of trial court to this effect is upheld. In that view of the matter when the age of the girl is below 16 years, her consent, which fact, in our view on the material on record is also not proved, becomes wholly irrelevant.

(22) Learned counsel for the appellant has then laid great stress on non-examination of Smt. Poorna. His contention is that the present enquiry had started on the information given by Smt. Poorna to the mother of the victim and so she was a material witness and her non-examination caused serious infirmity in prosecution case. This is disputed by learned counsel for the State on the ground that she was won over by the accused and so was given up on the application of the prosecution.

(23) Smt. Poorna was cited as a prosecution witness but she has not been examined. In *Stephan V. The King* Air 1936 PC. 289, it was observed by the judicial committee that 'witness essential to the unfolding of the narrative on which the prosecution is based, must of course be called by the prosecution'. This has been followed in *Narain and others V. State of Punjab*, : 1959 CriLJ537 and in this later authority, as to what is the material witness has been explained where it has been observed that 'the test is whether he is a witness essential to the unfolding of the narrative on which the prosecution is based. Whether the witness is so essential or not would depend, on whether he could speak to any part of the prosecution case or whether his evidence disclosed that he was so situated that he would have been able to given evidence of the facts on which the prosecution relied'. Smt. Poorna was not a witness of occurrence and would not be able to given evidence of the fact on which the prosecution relied and so is not a material witness. As is recorded in the proceedings by the trial Court, on 4-8-88, it was stated by the prosecutor that the witness had been won over by the accused and so was given up. The prosecutor has a discretion as to which witness should be called for the prosecution and no fault can be found in it unless it can be shown that the prosecutor has been influenced by some motive. No such motive has been imputed in this case. The accused had opportunity to examine her which he has not done. In any case, the testimony of this witness by the prosecution could have been used as a link piece of evidence. As held hereafter. the testimony of the victim has been found to be truthful, cogent and reliable and is sufficient to base conviction without any corroboration. This contention, thus, has no force.

(24) Learned counsel for the appellant laid great stress on the fact that the Fir lodged is highly belated which casts doubts on prosecution case. The delay in giving Fir cannot by itself be held to be a reason for rejecting the evidence if it is otherwise entitled to credit. Delay in lodging the Fir is only a circumstance which puts the Court on its guard. There must exist clear indication of fabrication in such cases and in that case courts are required to subject evidence as well as the contents of the Fir to careful and closer scrutiny. Whether to reject the Fir on ground of delay depends on facts and circumstances of each case and when the Explanationn for delay in giving the Fir is satisfactory. the delay is not of material significance (*Harpal Singh V. State of U.P.*, : 1981 CriLJ1 ; *Zakir & Others V. State*

of U.P. : 1991 CriLJ56 and Tara Singh & Others V. State of Punjab : AIR 1991 SC63 .

(25) As noticed below, the delay is not due to any confabulation to cook up a false case, but because of the fear psychosis created by the accused in the mind of helpless victim.

(26) Coming to the merits of the case, Bimla appeared as PW-1. She has narrated what she had earlier reported in her first information statement and before Magistrate. She has deposed that on 15-5-87 her parents along with her younger brother and sister had gone to village Chakkarpur in District Nainital. leaving her alone in the house as she was studying in 6th standard and her school examination was going on. Rakhi, the daughter of the accused, was also studying in 6th class in the same school and was her friend and used to come to her house; being alone at her house after her parents went outstation; she slept for 5-6 nights at the house of the accused; there were two rooms in the house of the accused, in one room she and Rakhi slept while in the other room, the accused with his other family members i.e. his wife and two sons used to sleep; on the first or second night while she was so sleeping with Rakhi during the night, the accused came and awakened her laid down with her and tried to open the string of her salwar but in the meantime, Sanjay, aged about 13 years son of the accused who was sleeping in the other adjoining room started taking turns and the accused got up and went to his room: she did not narrate this incident to anyone because she was all alone at her home and continued sleeping at nights at the house of the accused. After about two nights, again the accused came to her and awakened her, this time she poured water on cot from a water bottle hanging nearly on the wall. At this the accused got up and went to the kitchen, on the noise of the fall of the bottle, Rakhi got up and she (Public Witness -I) told her that there was somebody in the kitchen to which the accused said that it was he. and was drinking water. In view of these overtures of the accused, she told Rakhi on the next day that she will not sleep in her house taking the plea that her house was lying vacant and a theft could take place there; thereafter she slept at her own house.

(27) On 31-5-1987, she was alone in her house when at about 3.45 p.m., the accused knocked at the door of her house, on her enquiry as to who he was. the accused replied that his motor cycle had gone out of order and that he had come to take the key to their cycle. As soon as she opened the kundi of the door, the accused immediately entered and bolted the door, she had asked him to unbolt the door but he told her that in case she cried or raised alarm or told to anybody, she will be defamed and will be beaten by her parents as well as by him, she was frightened on hearing this. The accused caught hold of her from both hands first, made her to sit on a chair and then he laid her down on the charpai which she quietly did out of fear. The accused had also told her that he had got himself operated upon and that nothing will happen to her. He took of his pants and also removed her salwar and committed rape on her while she was writhing with pain and weeping. When the accused got up some white material had fallen down on the chaddar which the accused had cleaned with his handkerchief. The accused had also told her that she was suffering from leprosy and that no good boy will marry her and he will get her married to a good boy and her life will be settled, in the meantime, their neighbour Poorna knocked at the door of the house. She tide her salwar and the accused put on his pant. The accused told her not to say anything to anyone and concealed himself in the bathroom saying her to bolt the bathroom from outside which she did, she opened the door Poorna came in on the excuse of taking 'neel'. came up to the bathroom and went away. The accused left at about 5.30 p.m. Out of fear and defamation she did not tell this incident to anyone. After about 8-9 days of the incident, her parents returned home and out of fear she did not tell anything to them also. On 20-6-87, at evening time. Smt. Poorna came to her house and told her mother that in their absence their neighbour Kedar Nath had come to their house. Her parents, thereafter, enquired from her with love and anger as to what had happened and when. she became fearless, she told this incident to them. On the next day. her father took her to Police Station where she made her statement to the Police (Ex. Public Witness - 1/A). She was medically examined at the hospital. She had made her statement (Ex. Public Witness -1/10) before the Magistrate on 25-6-87.

(28) It is not challenged in. cross-examination of Public Witness -1 that she was left alone father house during 15-5-87 till about 8-6-87 when her parents had gone

to the village in Nainital District she and Rakhi the daughter of the accused were students of 6th class, studying in the same school, were friends and on visiting terms, and Bimla had stayed at the house of the accused for 5-6 nights during 15-5-87 to 31-5-87, that Bimla and Rakhi used to sleep in a separate room while the accused with his other family members in the separate adjoining room in his house. There is also no specific suggestion that he had not tried to misbehave with Bimla on two nights and his attempts were foiled because of the circumstances stated by Bimla. It is also not specifically challenged that Bimla had stopped sleeping at his house during nights thereafter because of these two incidents on the part of the accused.

(29) Regarding the incident of 31-5-87. it is suggested to her that the accused had not gone to her house on 31-5-87, which she denied. It was not suggested to her that the accused was out of station or was elsewhere at the time of occurrence and so could not be present at her house. However, in statement under Section 313 Criminal Procedure Code . he has taken two pleas : 1. that on 31-5-87. he was not at Delhi, but gone to Hissar; 2. the father of the prosecutrix had taken from him Rs. 2,000 at one time, Rs. 1050 in the month of December, 1986. Rs. 1050 in the month of January, 1987 and again before going to his village he had asked the accused for Rs. 2000 saying that he .will repay after returning from the village but he did not give the amount as his wife became angry. After he came back from his village, accused had demanded money from him which he refused and a quarrel took place her father had threatened him that he will implicate him in a false case and he was falsely implicated in this case. No such suggestions were put to Public Witness -1 or to her mother who appeared as Public Witness -6. Her father appeared as Public Witness -8 on 22-5-90 and to him it was suggested that he used to borrow money from the accused and when he failed to return the amount to him. he got the accused falsely implicated in the present case, which he denied. The accused has not adduced any evidence in defense to prove the plea of the alibi and there is no other material in support of this plea. There is no material on the record in support of the pie a of the father of the prosecutor being indebted to the accused also. There is nothing elicited nor other material placed on the record to show when. for what purpose her father needed money, when it was paid and if the accused was in a position to pay any such amount. Obviously. these pleas are

not bona fide and are after thought and have been rightly disbelieved by the learned trial Court.

(30) The other circumstances alleged is that the girl would have told the incident to some one after the occurrence as she had opportunity to tell the same to Poorna or anybody else when she went out of the house or when her parents had returned on or about 8-6-1987. Her silence shows that no such incident had taken place.

(31) The girl was only 12 years old. She was alone in the house and apparently had no near kith and kin in whom she could confide and look for help in the absence of her parents. Threats of causing physical harm, and defaming her had been extended by the accused and she being in the care of the accused and his family, obviously would not have thought it proper in those circumstances to disclose this incident to anyone and, perhaps, she avoided further trouble to her by her this silence. The conditions of a girl or a woman placed in such situation in Indian conditions is too precarious and obviously, she would be afraid of the consequences of making the incident public. The fact that she would have been afraid is also clear from the fact that she did not narrate the incident even to her parents after they returned on or about 8-6-1987. She had told her 'parents when they made enquiries from her angrily and lovingly. There is no reason to disbelieve her. It is not the case of the accused nor has he brought any material on the record that she or any of her close relations was placed in such situation or circumstances that there is a likelihood of her having leveled false allegations to save herself or other near relation from some trouble except the plea of the father of the girl being indebted to the accused which has been disbelieved. It cannot be believed that her parents would have compelled and tutored her to concoct and invent such a story for no valid reason, Her parents would not have taken such a false plea to spoil the whole future career of their young daughter and besides lowering respect and reputation of the family. They were not in any such adverse or inconvenient circumstances prompting them to have resorted to using young daughter in levelling of false accusation. The prosecutor was a young girl of 12 years old and was a student of 6th class She has made consistent statements in the FIR. before the Magistrate under Section 164 Criminal Procedure Code . and during trial before the learned Sessions Court. Nothing of substance has been

elicited in her cross examination to doubt or disbelieve her testimony. Being, a friend of the daughter of the accused and having enjoyed the hospitality of the accused and his family, she would not have shown ingratitude by inventing such false story for no valid reasons.

(32) The medical report also supports her. Public Witness -5 Dr. (Mrs.) Neerja Bhatia working as a Senior Resident Doctor in Aiims, New Delhi on 23-6-1987 when Bimla was brought to her by a constable had examined her vide medical report Public Witness -5/C and she had noticed the following conditions :-

'On physical examination, I had noticed that examination of the genitalia, old hymen tear was present, the vagina admitted two fingers ; cervix was pointing forward, uterus was retroverted, fornices were free'.

She further stated that injury having been caused might have healed when she was medically examined. She further stated that it is possible that the vagina can admit two fingers owing to intercourse at a time depending upon the size of the male organ. In cross-examination, there is no suggestion that the prosecutrix had not been subjected to sexual assault.

(33) The incident of rape had taken place on 31-5-1987 and this medical examination was made after 23 days. No injuries would be available after such a long time. This medical report corroborates the testimony of the prosecutrix and in no way creates any infirmity in her testimony. This material on record also does not warrant any justification to hold that she was a consenting party apart from the fact that consent is immaterial in this case.

(34) The learned trial court has believed her testimony. Her testimony has been found to be cogent, sufficient and reliable and we do not find any reason to interfere in the finding of the trial court to this effect.

(35) No further point has been canvassed. In view of our above discussion. the order of conviction is based on evidence on record is reasonable and justified and the same is upheld.

(36) Learned counsel for the appellant has, however, contended that the sentence awarded is too harsh and the circumstances do not warrant for imposing of maximum sentence with heavy fine.

(37) Learned trial court, while awarding the sentence has observed that under Section 376, Indian Penal Code , after its amendment in 1983, the minimum punishment is not less than 10 years and it may go up to life imprisonment. This has been wrongly assumed because after this amendment, the minimum sentence prescribed is 7 years rigorous imprisonment though the sentence may be awarded up to life imprisonment or it may extend up to 10 years besides fine.

(38) No doubt, the crime is heinous and calls for exemplary punishment. Besides awarding a sentence of life imprisonment with a fine of Rs. 5,000.00 seems to be too harsh inasmuch as there are not very special circumstances to impose the maximum sentence of life imprisonment, besides this fine. In our view, it will meet the end of justice if the substantive sentence is reduced to rigorous imprisonment for 10 years and maintaining the sentence of ,

(39) The appeal is accordingly partly allowed only on the point of sentence. The order of conviction passed by the trial court is maintained. However, the sentence of imprisonment for life imposed by the trial court is set aside and in its place the order of sentence for the period of 10 years rigorous imprisonment is passed. The order of fine and compensation and further rigorous imprisonment for a period of 2 years in default of payment of fine, as passed by the trial court is maintained.

(40) The accused is in jail. He shall be informed accordingly. Accordingly appeal partly allowed.

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