

Mohd. Shakeel Vs. State

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Court : Delhi

Decided On : Apr-30-2012

Judge : Suresh Kait

Appeal No. : CRL. A. No. 471 OF 2009

Appellant : Mohd. Shakeel

Respondent : State

Judgement :

SURESH KAIT, J.

1. The present appeal is being filed while challenging the judgment dated 27.03.2009 whereby the appellant has been held guilty and convicted for the offences punishable under Section 366 / 376 (2) (f) Indian Penal Code, 1860.

2. Also challenged the Order on Sentence dated 31.03.2009, whereby the Id. Trial Court has sentenced him to undergo RI for a period of 5 years and to pay a fine of Rs.2,000/- for the offences punishable under Section 366 of Indian Penal Code, 1860 and to undergo RI for a period of 10 years and to pay fine of Rs.3,000/- for the offences punishable under Section 376 (2) (f) of Indian Penal Code, 1860. Both the sentences have been ordered to run concurrently.

3. Benefit of Section 428 Cr.P.C. has also extended to the appellant.

4. Brief facts of the case are that vide FIR no. 64/2006 dated 27.01.2006 case was registered on the basis of statement made by Tabassum, elder sister of the child victim (name of the child victim withheld to conceal her identity).

5. As per the statement made by Tabassum before SI Sambhu Nath, stated that she along with her four sisters and two brothers used to reside in Jhuggi No. 278, Moolchand Basti, Part-III near Powerhouse, Darya Ganj, New Delhi. Youngest sister i.e. child victim aged about 8 years was studying in IIIrd Standard in a Govt. School near Shanti Van. She used to go her School at 7 Pm and returned at 12 noon. Thereafter, she used to go for tuition at 1 Pm at Darya Ganj itself and returned at about 5 pm daily. Thereafter, she used to go for play.

6. On 27.01.2006 also as routine, the child victim left her house at about 5.15 pm to play near her house and returned at 7.30 pm. The complainant noticed blood stains on her cloths. She questioned her sister as to what happened to her. The Child victim informed that two boys namely Shakeel (appellant herein) and Akash @ Azibullah allured her to accompany them on the pretext that they would give biscuits to her. Accordingly, they took her in Rickshaw from Moolchand Basti to Feroz Shah Kotla. Appellant Shakeel committed rape upon her at a deserted place. The complainant narrated the incident to her parents and also checked her younger sister. She noticed bleeding from her private part, who also complained of pain. Then she along-with her uncle Mohd. Intezer took her to LNJP Hospital, where police recorded her statement.

7. After completing the investigation, police filed the chargesheet before the court. It was recorded therein that Duty Constable Yashvir Singh was posted at LNJP Hospital of PS-Darya Ganj, who reported about the admission of child victim. This information was recorded vide DD No. 23 (A), which was assigned to SI Sambhu Nath who along with Constable Rajiv reached at the spot. He obtained MLC of child victim, as per which the child was referred to Gynae emergency for expert opinion and management. The child victim was examined and the clothes, blood sample and vaginal smear of victim were handed over by the Doctor in a sealed parcel along with sample seal which were seized by the IO. The Doctor declared the child victim unfit for statement. Therefore, the statement of her elder sister

Tabassum was recorded on the basis of which case for the offences punishable under Section 363 /376/34 Indian Penal Code, 1860 was registered. Subsequently, statement of child victim was also recorded wherein she named other two accused persons also.

8. Further it was recorded that, during investigation, accused Mohd. Siddiqui, Akash @ Azibullah, Robin Mandal, Mohd. Shakeel / appellant, Raju Kumar and Salim were arrested. After completion of investigation, accused Mohd. Siddiqui, Akash @ Azibullah, Robin Mandal (all acquitted) were send to face trial for the offences punishable under Section 363/34 Indian Penal Code, 1860, whereas accused Raju Kumar, Shakeel / appellant and Salim were chargesheeted for the offences punishable under Section 376 (2) (f) Indian Penal Code, 1860.

9. The Trial Court vide order dated 20.05.2006 framed charge against five accused namely Mohd. Siddiqui, Akash @ Mohd. Azibullah, Mohd. Shakeel / appellant, Salim and Raju Kumar Mandal for the offences punishable under Section 376 (2)(f) and (g) Indian Penal Code, 1860 and also under Section 366 read with Section 34 Indian Penal Code, 1860, to which they pleaded not guilty and claimed trial. Accused Robin Mandal was discharged vide order dated 20.05.2006.

10. Prosecution in support of its case examined 21 witnesses in all. All the 5 accused have been examined under Section 313 Cr.P.C. to enable them to explain the evidence appearing against them.

11. Since out of the 5 accused, four have been acquitted from all the charges, therefore, their statement under Section 313 Cr.P.C are not being discussed.

12. The appellant in his Statement under Section 313 Cr.P.C. stated that he was lifted from Raen Basera at Fawara by three police officials. He was taken by the police to make some inquiry in some incident of quarrel and in the police station, he was asked whether he knew Lambu, Akash, Salim etc. He was also asked, whether he knew the rape victim, to which he said „Yes?and thereafter, he desired to meet the rape victim, but he was not allowed and later on, he was sent to jail. Thus he has been falsely implicated in this case.

13. The present appellant in his defence has examined DW Vijay Kumar, who stated that he was working as Supervisor in NGO namely **Ashrey Adhikar Abhiyan**, which was running a night shelter „Raen Basera?at Chandni Chowk. He knew the appellant, as he used to work as a Committee Worker. He has further stated that on 27.01.2006, appellant was on duty from 7 Am to 7 Pm. He had never seen the appellant indulging in any illegal activity. However, in cross-examination, he has admitted that during duty hours, no Register is maintained to record the movement of the employees. No Attendance Register has been produced by him in support of his statement.

14. The statement of PW1, child victim has been recorded without oath after putting question to her to ascertain her capability to understand the questions and answers them. She has stated that she along with her brothers and sisters used to reside at her house and was studying in Ist Standard in a Govt. School situated near her house. Her sister Tabassum worked as a maid servant in a Kothi and stayed in Jama Masjid. Accused Raju, Shakeel (appellant herein) and Akash taken her to a Jhuggi in a Rickshaw and accused Raju and Shakeel (Appellant herein) committed rape upon her.

15. She further stated that 3rd boy had also committed rape upon her, but she was unable to recollect his name. She stated that accused Mohd. Siddiqui and Akash had not committed any rape. On seeing accused Salim in Court, she stated that he had also committed rape upon her and thereafter, he took her in a Rickshaw and left her near her home.

16. She further stated that when she was raped, she felt acute pain. She wanted to shout, but accused Raju pressed her mouth at the time of committing the rape. She knew all the accused persons before the incident. When she reached home, she stated these facts to her sister Tabassum. Thereafter, she was taken to Hospital by her uncle and her sister Tabassum. Her clothes were blood stained. She was medically examined. Police also reached the hospital and she narrated the facts to the police also. The blood stained clothes were seized by the police. Statement under Section 164 Cr.P.C. was also recorded before the Magistrate, which is Ex.PW1/A.

17. As this child witness was deviating from her earlier statement, she was cross-examined by Id. APP. During cross-examination, she admitted the suggestion given by Id. APP for state that, her sister Tarannum used to work and live at Patri (Footpath) at Meena Bazar along with Shakeel (appellant herein), Raju and Siddiqui @ Lambu.

18. She also admitted that she stated before the police in her statement dated 18.02.2006 that on 27.01.2006, when she was playing near her Jhuggi accused Raju and Salim met her and they were known to her previously. Accused Salim used to reside at Meena Bazar, Jama Masjid along with her sister Tarannum and the accused persons used to meet her there. They also used to give her biscuits and chocolates. She also admitted having stated before the police that in the evening accused Raju and Salim met her at Mool Chand Basti and offered to give her biscuits and she accompanied them. They took her to Rajghat Powerhouse, where, Akash, Shakeel / appellant and Mohd. Siddiqui met her on a rickshaw being pulled by one person wearing red shirt and they started talking to each other. After some time, accused Raju and Salim made her to sit in a Rickshaw along with accused, Shakeel / appellant and Mohd. Siddiqui. She was taken to Power Station Stadium at a lonely place, where accused Salim and Raju reached on foot and thereafter, accused Raju and Salim offered to give her biscuits and took her to place in bushes. They laid her down in a pit and thereafter, she was raped. She further stated that she came to know the name of Rickshaw Puller as Robin Mandal afterwards. She identified her clothes Ex.P1 and P-2, to be same, which she was wearing at the time of incident.

19. Sh. Nizamuddin, PW5, father of the child victim deposed that on 27.01.2006 at about 7.30 PM, his daughter aged about 7 years reached home and her clothes were blood soaked. Her elder sister Tabassum asked her as to what had happened, thereto she replied that Raju and Salim met her at Moolchand Basti and took her in bushes near Ferozshah Kotla. Three other boys namely, Akash, Shakeel/ appellant and Siddiqui were also present there and that Raju, Salim and Shakeel / appellant committed rape upon her. He further deposed that his daughter Tabassum and brother Intezar took the child victim to JPN Hospital for medical treatment. He has also stated that all the above accused persons were

known to his daughter Tarannum aged about 19 years, who roams here and there and live like “Khanabadosh” and not having good character (Awara). He did not know any of the accused persons personally.

20. Mohd. Intezar (PW6) uncle of child victim deposed that on 27.01.2006, at about 7.30 PM, he was present at the house of child victim and when she returned home, her clothes were blood stained. On being asked by her sister Tabassum, she did not say anything as she was nervous and after sometime, she said that Akash and Shakeel / appellant took her to Kotla Ground and Akash had done “galat Kaam” (rape) with her. She also mentioned the name of other 2-3 persons. Thereafter, he along with Tabassum took her to Irwin Hospital. On the way to hospital, the child victim became unconscious.

21. As this witness was also resiling from his earlier statement, he was cross-examined by Id. APP for State. During cross-examination, he admitted that the child victim had told that Akash and Shakeel / appellant had taker her by tempting her to give biscuits and Chocolates and had committed rape upon her.

22. Complainant Ms. Tabassum (PW18) / elder sister of the child victim deposed that at the time of incident, child victim was aged about 6 years and was studying in Illrd Standard in a Govt. School near Shanti Van close to her house. On 27.01.2006, in the evening time, her sister was playing near the house. She returned at about 7.30 PM. She saw blood on the clothes of her sister. On enquiry she told that Shakeel and Akash took her to Ferozshah Kotla in a Rickshaw on the pretext to give her biscuits. Shakeel / appellant and Akash did “galat kaam” (i.e. rape) upon her.

23. This witness has further stated that, first she told this incident to her uncle and then to her parents. The child victim was bleeding from her private part. She along with her uncle Mohd. Intezar took her to JPN Hospital, where she got treatment. Police reached the hospital and recorder her statement Ex.PW18/A.

24. Head Constable Anil (PW2) proved the FIR Ex.PW2/A.

25. Constable Balraj (PW3) depose that he took accused Akash @ Azibullah to LNJP Hospital for medical examination and has proved the blood sample sealed with the seal of LNJP Hospital, which he handed over to IO, who seized the same through Ex.PW3/A.

26. Constable Rajiv (PW7) was with IO/SI Sambhu Nath and accompanied him to LNJP Hospital on receipt of copy of DD NO. 23A. In his presence, IO collected the MLC of child victim, recorded the statement of complainant Tabassum, the pullandas handed over by the Doctor were given by him to IO who seized the same vide Ex.PW7/A and he also took the Rukka to Police Station and got the FIR registered.

27. Constable Yashvir Singh (PW19) has proved the alleged history of sexual assault, which was recorded vide DD No. 23A, which is Ex.PW19/A.

28. SI Ashok Kumar of Crime Branch, Central District (PW11) has proved the report prepared by him after inspection of spot as Ex.PW11/A.

29. Head Constable A.K. Krishnan, Photographer (PW13), who took the photographs proved the same as Ex.PW13/A1 to A5 and negatives as Ex.PW13/B1 to B5.

30. Constable Suresh (PW12) took the case property to FSL Rohini vide RC No. 203/21 and deposed that so long the case property remained in his custody, the same was not tampered with.

31. Head Constable Narender Singh (PW16), MHC (M) at PS-Darya Ganj deposed that on the direction of IO on 06.03.2006, he handed over 18 Pullandas with intact seal to Constable Suresh for depositing the same at FSL, Rohini. Also deposed that so long as the case property remained in his custody, the same was not tampered with.

32. Dr. Kamna (PW15) has identified the handwriting and signature of Dr. Kanchan on the MLC Ex.PW15/A of child victim at point „A?and stated that Dr. Kanchan had left the services of hospital. She was conversant with the handwriting and signature of Dr. Kanchan as she had seen her signature and hand

writing during the course of official duties.

33. Dr. Anil Mittal (PW17) examined the child victim to ascertain her age and from the report Ex.PW17/A, the age of the girl was between 7-8 years at that time. He has also examined the vaginal smear and prepare the report Ex.PW17/B as per which the vaginal smear showed vaginal epithelial cells, bacterial debris and lots of RNCs and WBCs and a few sperm heads were also seen in the same.

34. Ms. Kaveri Baweja (PW21), the then Metropolitan Magistrate has proved the statement recorded under Section 164 Cr.P.C. of the child victim as Ex.PW1/A.

35. SI Sambhu Nath (PW20), IO of the case has proved the receipt of DD No. 23A Ex.PW19/A. He deposed that the Doctor handed over the sealed pullandas, which was seized vide memo Ex.PW17/A. The child victim was unfit for statement, hence, she recorded the statement of Tabassum, sister of the child victim present in the hospital and made his endorsement Ex.PW20/A thereon and send the Rukka through Ct. Rajiv for registration of the case who, on return, handed over to him the copy of FIR and original Rukka.

36. He further deposed that he deposited the case property in Malkhana. On 28.01.2006, after the child victim was declared fit for statement, he recorded her statement.

37. This witness further deposed that on 29.01.2006, he along with Head Constable Ganejder and Constable Surender who was present at the corner of Faiz Bazar, at about 3 PM on the basis of secret information, accused Mohd. Siddiqui @ Lambu, Azibullah @ Akash and Robin Mandal were apprehended from Meena Bazar. They were interrogated and arrested. They made their disclosure statements. Thereafter at the instance of accused Akash, Shakeel / appellant was arrested from Raen Basera, Gurudwara, Chandni Chowk. His personal search was conducted and accused Shakeel / appellant also made his disclosure statement. Thereafter accused Mohd. Siddiqui was sent for medical examination. On 29.01.2006, one cycle Rickshaw produced by Robin Mandal was also seized vide memo Ex.PW8/X and photocopy of one Register relating to said Rickshaw produced by Sh. Yag Dutt Sharma was seized vide memo Ex.PW8/Y and case

property was deposited in Malkhana. Thereafter, this witness, being IO, did all the necessary formalities required in the instant case.

38. Ld. Trial Judge has recorded that the child victim was of tender age being about 8 years only, but there is no hard and fast Rule that child witness can never be relied upon. Rather child witness is more innocent and likely to speak truth. It is evident that the child victim narrated the incident to her sister just on her asking and in the form of narration. Her statement can be safely relied as all the necessary precautions have been taken in the present case, while recording her statement.

39. It is further recorded in the impugned judgment that there is some confusion regarding the name of accused in the statement of prosecutrix recorded under Section 161 Cr.P.C., under Section 164 Cr.P.C. and the statement in Trial. She has named some person in one statement, omitted certain names out of all those in subsequent statement and added names of news persons. But those names were confusing and resembling, as most of the accused were having more than one name and they were describing as alias.

40. Ld. Trial Judge has further recorded that at the same time, sight cannot be lost on the fact that standard of assessing statement of child witness cannot be same as that of mature witness. Laxity has to be given for her immaturity, power to retain things and reproduce them. Lastly name of one of accused Shakeel / appellant was there in all statements. So, the statement against him can be safely believed.

41. Ld. Trial Judge has further recorded that the child victim was a very young girl, who trusted accused Shakeel / appellant as he was friend of her sister. More so, she knew him to be the person, who would give her some toffee and biscuit etc. This small temptation of a child who is from a very poor family, proved disastrous for her so much so much so that she suffered 2 perineal tear. The statement of child victim, that rape was committed by accused Shakeel / appellant remained consistent right from the stage of informing her sister till recording of her testimony by the Court. Even when her MLC was prepared in Gynae Emergency, she named one Shakeel / appellant to be the person, who sexually assaulted her. So, the name of Shakeel not only appear at the first stage. Even before the Court, she

identified the appellant to be the person, who committed rape on her.

42. Ld. Trial Judge has also recorded that no doubt, she named other accused persons also, but her testimony qua the other accused persons was not reliable. The testimony of the child victim to the extent that it was accused Shakeel / appellant, who had taken her to a deserted place on the pretext of giving biscuit and committed rape upon her, inspiring confidence and even her sister Tabassum (complainant) also corroborated the testimony of child victim that on being asked, she informed that accused Shakeel / appellant had committed rape upon her. There was no motive for an innocent girl aged about 7-8 years to falsely implicate the appellant in this case. Her physical condition at the time when she was brought to Gynae Casualty speaks the physical and mental trauma under which the child victim had undergone at the hands of appellant whom she trusted being the friend of her sister Tarannum.

43. Thus, the trial judge opined that the statement of child victim against accused Shakeel / appellant is sufficient to prove beyond reasonable doubt that it was the appellant, who had taken her with intention to commit illicit intercourse with her and after taking her to deserted area, committed rape upon her.

44. Ld. Trial Judge while acquitting the other accused persons, as recorded that as far as accused Mohd. Azibullah @ Akash is concerned, the child victim had specifically stated that Akash had not committed rape upon her. She also nowhere stated that Akash accompanied appellant up to deserted area where rape was committed on her or that he was standing as a Guard, when rape was committed by Shakeel / appellant. Therefore, accused Mohd. Azibullah @ Akash has been acquitted in the case.

45. So far as accused Mohd. Siddiqui, Raju Kumar and Salim are concerned, the statement of child victim regarding their role is wavering. Accused Raju Kumar Mandal and Saleem have been arrested after the arrest of appellant Shakeel, Akash, Robin Mandal and Mohd. Siddiqui. Akash and Shakeel / appellant were named in the FIR, but no blood has been found on their clothes nor they led the police party to the spot and were sent to judicial custody immediately after their arrest. Accused Raju Kumar, who was neither named in the complaint nor even as

per MLC committed rape, was arrested and on his instance, accused Salim was arrested. The report of DNA is in the nature of circumstantial evidence only. It is an opinion which can never taken place as active proof. At this stage, it may be recollected that Salim and Raju on whose clothes blood stains detected in DNA were not named as rapists in the initial statement of the victim before her sister, the complainant as well as before Doctor.

46. Ld. Trial Judge has also recorded that stains have been found on the baniyan and T-Shirt of these accused persons, where it is unusual to have blood stains in a rape case. Things could have been understood had it been a case of injury on other parts of the body in which even blood stains could be found on upper clothes. The evidence adduced against these accused persons, namely Mohd. Siddiqui, Raju Kumar Mandal and Salim being insufficient to prove their guilt, they have been acquitted from the case.

47. Ld. Counsel for the appellant submits that total accused were 6 in number. One Rickshaw Puller namely, Robin Mandal has been discharged at the time of framing of charge, whereas other four accused have been acquitted as the prosecution failed to prove the case against them and more so, the statement of prosecutrix were not consistent against the other four accused. However, on the same set of evidence, appellant has been convicted despite, there is no consistency in the statement of the prosecutrix and her sister Tabassum / complainant.

48. Ld. Counsel asserted that during statement being recorded under Section 313 Cr.P.C. question no. 4 was put to all the 5 accused persons including the appellant:

“Q. it is further in evidence against you that Km. Khushnuma was taken by you accused and co-accused persons and was left near her house. What have you to say?”

“A. It is incorrect.”

49. Ld. Counsel further submits that if on the same evidence, which was put to all other accused persons, under Section 313 Cr.P.C. and all denied to be incorrect, therefore, Id. Trial Judge would have acquitted the appellant also along with other co-accused persons. The name of accused Raju was also coming on the evidence with the appellant, however, Raju has been acquitted. To this effect, Id. Counsel has referred question no. 2 put to accused Salim in his statement under Section 313 Cr.P.C. which is as under:-

“It is also in evidence against you that you accused Salim and co-accused Raju Kumar took Khushnuma to Rajghat Power House where co-accused Mohd. Siddiqui, Mohd. Azibullah @ Akash and Mohd. Shakeel met her on the Rickshaw and one person who was wearing red colour shirt and his name was revealed later on as Robin Mandal (already discharged) was pulling the Rickshaw. What have you to say?

A. It is incorrect.”

50. Ld. APP on the other hand, submits that the co-accused were acquitted on the reasons recorded by the trial court and the appellant has been convicted, reasons thereto, have also been recorded.

51. Ld. APP further submitted that there are specific allegations against the appellant that he and Akash offered to give her biscuit and took her in Rickshaw to Feroz Shah Kotla in a deserted place and appellant raped her. When complainant Tabassum (PW18) was examined in the court, she stated that on 27.01.2006 her sister i.e. the child victim was playing near their house and when she returned at about 7.30 PM, she saw blood on her clothes. On enquiry, child victim informed that she was taken in a Rickshaw to Feroz Shah Kotla by appellant Shakeel and Akash on the pretext of giving her biscuits and that Shakeel / appellant and Akash did “galat kaam” (i.e. rape) upon her. During her cross-examination, she stated that at that time, no other family members were at home. Her uncle Mohd. Intezar was residing near their house and that child victim became unconscious after some time in the hospital. She stated that she did not personally know accused Akash and appellant Shakeel as they never visited their house.

52. More so, prosecutrix stated that accused Raju and Appellant committed rape upon her. She stated that third boy also committed rape, but she did not remember his name and after seeing accused Salim, initially she stated that he did not commit rape upon her, but again said that Salim committed rape on her and thereafter, she was brought in a Rickshaw and left near her house.

53. Ld. APP further submitted that the name of appellant appears in the complaint, in the statement of child victim recorded under Section 161 Cr.P.C. and the statement recorded under Section 164 Cr.P.C. as well. Even in the court, she has named and identified him as the person, who committed rape upon her.

54. It is not in dispute that the accused persons are friend of Tarannum, elder sister of child victim, hence there is no doubt about the identity as the child victim knew all the accused persons including the appellant much prior to the date of incident and the appellant was named in the FIR to be the person, who committed rape.

55. Law has been settled in a case of **Thulia Kali vs. State of Tamil Nadu AIR 1973 SC 501**, wherein it is held as under:-

“First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be over-estimated from the standpoint of the accused. The object of insisting upon prompt lodging of the Report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the name of eye witnesses present at the scene of occurrence.

56. In the instant case, FIR has been lodged promptly after the admission of child victim in LNJP Hospital. In the complaint, name of the appellant has been named to be the person stated to have committed rape on the child victim. Thus, so far as involvement of the appellant is concerned, the statement of child victim is consisted that Shakeel had committed rape upon. This part of statement stands corroborated by the complainant Tabassum and is also established from the

history given to the Doctor in Gynae Casualty and noted by her on the MLC. No doubt, there are material discrepancies in the statement of child victim as to who had taken her and the persons who committed rape on her, but these discrepancies cannot be made ground to acquit the appellant and her statement that she was taken by appellant to a deserted area and raped her there is truthful and inspiring confidence.

57. The victim child is of a very young age, who trusted the appellant as he was a friend of her elder sister and therefore, she knew him to be a person, who would not breach her trust. The statement of child victim that rape was committed by appellant remained consistent right from the stage of informing her sister about the incident till recording of her testimony by the Court. Even when her MLC was prepared, she named appellant to be the person, who sexually assaulted her. Therefore, the name of appellant appears from the very first stage and also identified by the prosecutrix in the Court. There is no motive for any innocent girl to falsely implicate appellant in this case. Thus the statement of child victim against appellant is sufficient to prove beyond reasonable doubt that it was the appellant, who had taken her with intention to commit illicit intercourse with her and after taking her to a deserted place, committed rape upon her.

58. I find no discrepancy in the judgment passed by Id. Trial Court, whereby, he was held guilty and convicted for the offences punishable under Section 366/376 (2) (f) Indian Penal Code, 1860.

59. On the order on sentence, Ld. Counsel for the appellant has submitted that on going through the evidence on record, it is emerged that the victim herself has submitted in writing that appellant was in love with her elder sister Tarannum and wanted to marry her which was not acceptable to the father of the victim. Due to this reason, Taranum also set herself on fire and remained in the hospital for 10 days. Immediately, thereafter, the alleged incident took place and he was falsely implicated in this case by the family of the child victim. Therefore, Id. Counsel prayed that while maintaining the conviction, the sentence of the appellant may be reduced to the extent already undergone.

60. I note, to this effect when the child victim and her sister, father and uncle appeared in the witness box, no question about the love affairs of appellant with Tarannum and their proposal of marriage by this convict, no question was put to them.

61. In the case in hand, undisputedly, appellant / convict and his other associates were friend of Tarannum, elder sister of child victim. The convict not only betrayed the trust deposited in him by the child victim, but also left such a scar on her body and mind that throughout her life, she may find it difficult to trust any male relation and feel secure in his presence. The appellant and other co-accused are from the lower strata of the society and are vagabond, who have no life even if he comes out from the jail. He has a sister and old parents. He hardly can be a helping hands for his parents in their old age. He has already undergone only 6 years till date out of the total sentence of 10 years.

62. I am conscious, the victim being under 12 years of age at the time of rape, the offence being covered under Section 376 (2)(f) Indian Penal Code, 1860 and the minimum sentence providence being not less than 10 years which may extend to life imprisonment. Therefore, I find no ground even to reduce the sentence, therefore, the sentence dated 31.03.2009 is maintained.

63. Keeping the above discussion into view, I find no merit in the case accordingly, Criminal A. 471/2009 is dismissed.

64. Trial Court Record be sent back to the court concerned forthwith.

65. No order as to costs.

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