A. F. R.

Reserved on 13.7.2022

Delivered on 6.8.2022

Court No. - 74

Case :- CRIMINAL APPEAL No. - 4673 of 2019

Appellant :- Badri Narayan

Respondent :- State of U.P.

Counsel for Appellant :.- Amar Jeet Upadhyay

Counsel for Respondent :.- G. A.

Hon'ble Suresh Kumar Gupta,J.

1. This criminal appeal has been filed against the judgment and order dated 27.6.2019 passed by Special Judge, POCSO Act/Additional Sessions Judge, Court No. 8 Meerut, in Special Criminal Case No. 30 of 2015 arising out of Case Crime No. 831 of 2014, under Sections 376, 506 IPC and 3/4 POCSO Act, P.S. Inchauli, District Meerut in which the appellant has been convicted and sentenced for the offence under section 376 IPC for 10 years R.I. with fine of 10,000/- in default of payment of fine additional imprisonment of 2 months, under section 506 IPC for 1 year R.I. with fine of Rs. 500/- in default of payment of fine additional imprisonment of 15 days and for under section 3/4 POCSO Act for 10 years simple imprisonment and fine of Rs. 10,000/- and in default of payment of fine additional imprisonment of 2 months.

2. Brief facts of the case is that F.I.R. was lodged by the mother of the victim, who is the complainant and the residence

of Police Station- Kuvad, District- Girideeh, District- Jharkhand, presently residing in House No. 704, I Block, Ganganagar Meerut has lodged a written report at Police Station- Inchauli District- Mathura against the appellant with the allegation that that one month prior her maternal-father-in-law came for stay at her home. One month prior of lodging the F.I.R. the appellant committed rape upon her minor daughter, who is aged about 8 years. When on 10.11.2014 the condition of daughter became deteriorated then her daughter was checked up by the doctor and the doctor opined that sexual assault has been done against her daughter. Complainant enquired with the victim then victim told that one month earlier the appellant committed rape upon her by extending threat to her daughter. When the appellant was asked about the alleged incident, then the appellant on the behest of relationship requested for not saying about this incident to anyone and told that all the expenses on the treatment of her daughter shall be borne by him. She also stated that to create fear upon complainant, the appellant himself inflicted injuries on his neck and on account of injury on neck he was admitted in medical college.

3. On the basis of written report, (Exbt. Ka-1), F.I.R. was lodged against the appellant as Case Crime No. 831 of 2014, under Sections 376, 506 IPC and 3/4 POCSO Act, P.S. Inchauli, District Meerut. After lodging of the F.I.R. the investigation of the present case was entrusted to the Investigating Officer- S.I. Om Veer Gupta. During the course of the investigation the site plan was prepared. The statements of the complainant and victim were also recorded. In the statement of under Section 161 Cr.P.C. the victim has stated that her age is about 8 years. During the course of the investigation the victim was also medically examined on 15.11.2014 in which she herself stated that her maternal-grandfather committed rape upon her 2-3

times. A medical examination report was prepared by P.W.-5, Dr. Sangeeta and as per medical examination report, no external or internal injury was seen on the body of the victim and her hymen was also found intact. Vaginal smear was taken for further examination and as per report dated 18.11.2014, no spermatozoa was seen on the vaginal smear. During the course of the investigation, the statement of the victim was also recorded under Section 164 Cr.P.C. in which she clearly stated that the appellant committed penetrative sexually assaulted on her private part by inserting the finger. Thus, the victim has supported entire version of the prosecution.

4. After completing the entire formalities of investigation the charge sheet was filed against the appellant before the Additional District and Sessions Judge/Special Judge POCSO Act, Court No. 12 on 26.2.2015. The charges were framed on 25.1.2017 against the appellant under Sections 376, 506 I.P.C. and 3/4 POCSO Act. Charges were read over to the appellant. The appellant denied the charges against him and claimed to be tried.

5. Prosecution in order to prove its case examined

(i) P.W.-1,-Sangeeta, who is complainant of this case, has clearly supported the entire version of prosecution and she proved the written report as Exbt-Ka-1. She clearly stated in her statement that her daughter/victim told her that the appellant committed rape in the absence of the complainant and her husband. She further submitted that when the condition of the victim became deteriorated then the victim was examined by the doctor. In pursuance of examination of the victim, the doctor opined that the victim was sexually

assaulted. When she asked her daughter then her daughter stated entire version to her mother. On the basis of statement of her daughter the F.I.R. was lodged by P.W.-1 by presenting the written report as Exbt- Ka-1.

(ii) P.W.-2 is the victim and in her statement recorded in October, 2015 she stated that the appellant committed rape upon her by extending threat. She clearly stated that the appellant inserted his finger in her private part and he had also shown the victim indecent film/picture on his mobile phone. He also extended threat to kill her for disclosing this incident to anyone. The victim is minor and the age of the victim was below than 10 years. The victim has also supported her previous version recorded under Section 161 Cr.P.C. in the statement recorded under Section 164 Cr.P.C. as Exbt. Ka-2.

(iii) P.W.-3, constable, namely, Gudia has clearly stated on the basis of written report that she registered the F.I.R. on 15.11.2014 against the appellant as Case crime No. 831 of 2014 under Section 376, 506 I.P.C. and 3/4 of the POCSO Act and thus she proved the chik F.I.R. as Exbt- Ka-3 and the general diary as Exbt- Ka-4.

(iv) P.W.-4- Investigating Officer/S.I. Om Veer Gupta proved the scatch map of the place of occurrence as Exbt- Ka-5 and charge sheet as Exbt- Ka-6.

(v) P.W.-5- Dr. Sangeeta examined the victim on 15.11.2014 and she stated that at the time of examination of the victim she opined that the victim was unmarried and was aged about 8 years. The menses of the girl was not

started. At the time of examination of the girl, no external or internal injury was found on the body of the victim. She proved the medical report as Exbt- Ka-7. She clearly stated that hymen of the victim was intact. As per medical examination, no external or internal injuries was seen on the body of the victim and it is also stated in her statement that in vaginal smear no spermatozoa dead or alive seen.

Thus, the prosecution relied upon as oral evidence of P.W.1 to P.W.-5 and so far as documentary evidence is concerned the prosecution relied upon Exbt. Ka-1 to Exbt- Ka-7.

6. After conclusion of the trial the statement of the accused-appellant was recorded under Section 313 Cr.P.C. in which the entire prosecution evidence were read over to the appellant and the appellant submitted that all the witnesses stated false statement against him before the court. Although he stated that that he wants to lead evidence in his defence but no defence witness or document was produced by the appellant.

7. Lastly, in statement under Section 313 Criminal Procedure Code the appellant stated that the complainant-Sangeeta inflicted cut injury on the neck of the appellant by sharp edged weapon and when she came to know that the appellant had not got any serious injury then she lodged false and frivolous F.I.R. on the basis of concocted story relating to sexual exploitation of her daughter.

8. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned trial court held the accused guilty and convicted him for the charged offences as aforesaid.

9. Learned counsel for the appellant argued that the appellant is innocent and has been falsely implicated in this case. It is also submitted that the F.I.R. lodged against the applicant is too much delay so no reliance can be placed, as the delay in lodging in the F.I.R. itself belied the prosecution case. He also submitted that the appellant is aged about 60 years and closed relative of complainant. In fact, the complainant has taken money from the accused/appellant and when the appellant asked about him money from the complainant, then the complainant inflicted injury to the appellant and cut his neck by knife in which the appellant received serious injury on neck and was admitted at LLRM Medical College, Meerut. When the complainant was in apprehension that the appellant may die then to save her skin and save herself from any criminal proceedings the complainant registered false and frivolous case of rape against the appellant. It was further stated that as per medical examination no mark of internal or external injury was seen on the body of the victim and hymen was intact. Therefore, no question of rape arises. Thus, the learned trial court has committed material illegality and irregularity in convicting the appellant in the present case. Thus, the conviction of the appellant was only on the basis of conjectures and surmises. Thus, the order and judgment of the trial court is liable to set aside.

10 . Learned counsel for the appellant submits that if this Court has come to conclusion that allegation against the appellant is well proved then he wants to advance his submission on the quantum of sentence imposed upon accused-appellant, therefore, he submits that the appellant is senior citizen and is in jail since 29.11.2014. Thus, he remained in jail during investigation during entire period of trial and

during pendency of appeal, thus, appellant is languishing in jail about 7 years and 8 months, so he prays for leniency.

11. Learned A.G.A. opposed the argument raised by the learned counsel for the appellant and submitted that the arguments of the appellant has no force and the present appeal is liable to be dismissed. Learned A.G.A. also submitted that as per medical report redness and swelling was found on the private part of the girl. Penetrative sexual assault has been committed by the appellant. One of the arguments of the learned counsel for the appellant is that no mark of injury was seen on the body of the victim. It was also reported that hymen was intact and no spermatozoa was found on the private part of the victim in the vaginal smear of the victim and therefore, offence under Section 376 I.P.C. and 3/4 of the POCSO Act is not made out against the appellant. In reply to this contention of the learned counsel for the appellant, learned A.G.A. relied upon the provisions of Section 375 I.P.C. and Section 3 of the POCSO Act be read.

12. I have heard Sri Amar Jeet Upadhyay, learned counsel for the appellant, learned A.G.A. and perused the record.

13. The provisions of Section 375-b I.P.C. is given below:-

375. Rape.-- A man is said to commit "rape" if he--

(a) ----------

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

The provisions of Section 3-b of the POCSO Act is given below:-

Section 3-Penetrative sexual assault

A person is said to commit "penetrative sexual assault" if--

(a) -------

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

Thus, on the perusal of the the definition of Section 375-b and Section 3 of the POCSO Act it appears that offence under Section 376 I.P.C. and 3/4 of the POCSO Act is made out against the appellant, so it cannot be said that the appellant has wrongly been convicted by the trial court. Thus, if the appellant inserted his finger in private part of the child/victim then it cannot be said that the appellant is not guilty of offence of rape.

14. One of the contentions of the learned counsel for the appellant is that F.I.R. was lodged with inordinate delay thus no reliance can be placed and delay in lodging the F.I.R. itself belies the whole prosecution story. Hon'ble Supreme Court in a catena of judgement has held that mere delay in lodging the FIR is no ground to doubt the prosecution case when it is properly explained. In ***Tara Singh and others Vs. State of Punjab, AIR 1991 SC 63,*** Hon'ble Supreme Court held that mere delay in lodging the FIR by itself cannot give scope for an adverse inference leading to rejection of the prosecution case outright. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence.

On perusal of the statement of P.W.-1, it appears that delay is clearly explained by the complainant thus delay in lodging the F.I.R. does not affect the credibility of prosecution version.

15. It is a settled principle of law that in cases involving sexual assault/rape, it is generally difficult to find any corroborative

witnesses, except the victim herself and therefore, the evidence of the victim is sufficient for conviction unless there exist compelling reasons for seeking corroboration. Thus, a conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The Apex Court has time and again held that the sole testimony of the prosecutrix is sufficient to hold the accused guilty if it inspires confidence and the same principles have been reiterated in ***Vijay v. State of Madhya Pradesh reported in (2010) 8 SCC 191.*** Relevant paragraph of the judgment reads as under:

> *"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."*

16. In ***Gagan Bihari Samal v. State of Orissa reported as (1991) 3 SCC 562***, The Hon'ble Supreme Court of India whilst observing that corroboration is not the sine qua non for conviction in a rape case, held as follows :

> *"6. In cases of rape, generally it is difficult to find any corroborative witnesses except the victim of the rape. It has been observed by this Court in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] as follows:*
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> *"Corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.*

> *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. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. 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. 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. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated."*

The above observation has been made by Apex Court relying on the earlier observations made by Apex Court in ***Rameshwar v. State of Rajasthan [1952 SCR 377, 386 : AIR 1952 SC 54 : 1952 Cri LJ 547]*** with regard to corroboration of girl's testimony and version. Vivian Bose, J., who spoke for the Court observed as follows: (SCR p. 386)

> *"The rule, which according to the 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 practise that there must, in every case, be corroboration before a conviction can be allowed to stand."*

17. Further, it is also a well settled principle of law that the testimony of child witness can be relied upon along with other circumstances and corroborative evidence to convict the accused. Undoubtedly, the settled proposition of law that the evidence of child witness is required to be scrutinised and appreciated with great caution. In this regard, reference can be made to the dicta of the Apex Court in the case of Yogesh Singh v. Mahabeer Singh and others reported in AIR 2016 SC 5160, wherein the Apex Court has held that:

> *"22. It is well settled that the evidence of a child witness must find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law. (See Prakash v. State of M.P. [Prakash v. State of M.P., (1992) 4 SCC 225 : 1992 SCC (Cri) 853] , Baby Kandayanathil v. State of Kerala [Baby Kandayanathil v. State of Kerala, 1993 Supp (3) SCC 667 : 1993 SCC (Cri) 1084] , Raja Ram Yadav v. State of Bihar [Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287 : 1996 SCC (Cri) 1004] , Dattu Ramrao Sakhare v. State of Maharashtra [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] and Suryanarayana v. State of Karnataka [Suryanarayana v. State of Karnataka, (2001) 9 SCC 129 : 2002 SCC (Cri) 413] .)*
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> *23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. (Vide Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177 : 1998 SCC (Cri) 1561])"Appreciation of testimony of the Victim 'T*

18. In view of settled law, I shall examine whether the evidence adduced by the prosecution, particularly the testimony of the victim, is trustworthy, credible and can be relied upon. From the perusal of the record, it transpires that the prosecutrix has deposed on same lines and there are no material contradictions in her testimony. The statement of the victim, P.W.-2 is duly supported with the statement of P.W.-1-Sangeeta, mother of the victim. The statement of the victim is also supported with medical evidence.

19. One of the arguments of the learned counsel for the appellant is that no mark of injury is present on the body of the victim but there is no force in the contention that there is forcible intercourse and it would have resulted into some injury on the prosecutrix. Presence of injury are not always *sine qua non* to prove the charge of rape. It would be kept in mine in the case of rape on a girl- child, who is aged about 8 years and not upon a grownup woman. In case of rape upon a child, sensitive approach of court is always needed. In the present case, the appellant has been charges for inserting finger in the private part of the victim, so question of rapture of hymen is not inevitable.

20. Further there are catena of decisions of Hon'ble Apex Court that it is necessary for the court to have a sensitive approach when dealing with the cases of rape. It is also trite that in the case of ***State of Himachal Pradesh Vs. Dharmapal, (2004) 9 SCC Page 681,*** Hon'ble Apex Court held that "rape is a serious offence, as it leads to an assault on the most valuable possession of a woman i.e. character, reputation, dignity and honour."

21. In State of Punjab Vs. Ramdev Singh 2004 (48) ACC 300 Hon'ble Apex Court held as under:-

> *"Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor. It leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by Apex Court in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, AIR 1996 SC 922 the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21of the Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."*

22. Considering the entire facts and circumstances of the present case, the Court is of the view that the prosecution is able to prove the charges levelled against the appellant.

23. However, learned counsel for the appellant stated that if this Court finds that prosecution is able to prove his case, then he only wants to advance his submission on the quantum of sentence imposed upon the accused and prays for leniency.

24. Not pressing the criminal appeal after the conviction of the accused by the court below is like the confession of the

offence by the accused. The Courts generally take lenient view in the matter of awarding sentence to an accused in criminal trial, where he voluntarily confesses his guilt, unless the facts of the case warrants severe sentence.

25. In the case of ***Sevaka Perumal etc. Vs. State of Tamil Nadu AIR 1991 SC 1463,*** the Apex Court in the matter of awarding proper sentence to the accused in a criminal trial has cautioned the Courts as under:

> "Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

26. In the case of ***Dhananjoy Chatterjee Vs. State of W. B. [1994] 2 SCC 220,*** this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. Similar view has also been expressed in ***Ravji v. State of Rajasthan, [1996] 2 SCC 175.*** It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty

if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

27. Appropriate sentence is the cry of the society. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

28. This position was reiterated by a three-Judge Bench of the Apex Court in ***Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat, (2009) 7 SCC 254,*** wherein it was observed as follows:-

> "99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared

> for and strengthened by string of deterrence inbuilt in the sentencing system.
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> 100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.
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> The court must not only keep in view the rights of the victim of the crime but the society at large also while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

29. In ***Jameel vs. State of Uttar Pradesh (2010) 12 SCC 532***, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus:

> "15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.
>
> It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of

> sentence and proceed to impose a sentence commensurate with the gravity of the offence."

30. In ***Guru Basavaraj @ Benne Settapa vs. State of Karnataka, (2012) 8 SCC 734***, while discussing the concept of appropriate sentence, this Court expressed that:

> "It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

31. In ***Gopal Singh vs. State of Uttarakhand JT 2013 (3) SC 444*** held as under:-

> "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."

32. On perusal of the entire record, considering the facts and circumstances of the present case and keeping in view of the statement of P.W.-1 and P.W.-2 it appears that prosecution story is cogent, credible and reliable. The prosecution is able to prove its case beyond shadow of doubt, therefore, prosecution has proved the charges against the appellant under Section 376 I.P.C. and Section 3/4 of the POCSO Act. In the present case, it is clear that the victim is below 10 than years and the appellant is 58 years adult committed rape upon a girl of tender age, so deterrent punishment is called for. Taking lenient view is out of question. Once a person is convicted for offence of rape, he should be treated with heavy hands and he is not deserving

any indulgence or liberal attitude. Awarding of adequate sentence to him is not important.

33. On the present scenario the appellant is in jail since 29.11.2014 and during investigation and trial the appellant remained in jail. After conviction he was also in jail. Thus, presently he in incarceration for about 8 years. It is also admitted that the appellant is poor. During trial he was not represented by counsel of his choice, so the contention of learned counsel for the appellant to adopt a lenient view in awarding the sentence to the appellant is fully acceptable.

34. Therefore, the conviction of the appellant is confirmed under Section 376 I.P.C. and Section 4 of the POCSO Act. Thus, on the point of conviction the appeal is **dismissed.** So far as regards the quantum of sentence is concerned, I considered that the minimum sentence of seven years is prescribed for offence under Section 376 I.P.C. and Section 4 POCSO Act. Therefore, keeping in view the facts and circumstances of the present case, I am of the view that end of justice would be served, if the appellant is sentenced to imprisonment for the period, which he has already undergone, **consequently awarded sentence is reduced to the period already undergone by the appellant-Badri Narayan.** It is hereby also directed that the fine clause shall be unaltered. Appellant is directed to deposit the fine of Rs. 10,000/- before the trial court. The deposited amount i.e. Rs. 10,000/- shall be awarded in favour of the victim under Section 357 (2) Cr.P.C.. Thus, this appeal is **partly allowed** on the point of sentence only.

35. With the above observations/directions, this appeal is **disposed of.**

36. Let a copy of this order along with lower court record be transmitted back to the trial court concerned for necessary compliance. A copy of this order be also given to the Superintendent of Jail of the concerned District for compliance of order of this Court.

Order Date :- 06.08.2022

Anuj Singh