PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
GURMIT SINGH & ORS.

DATE OF JUDGMENT: 16/01/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 1393 1996 SCC (2) 384
JT 1996 (1) 298 1996 SCALE (1)309

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

DR. ANAND, J.

This appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 is directed against the judgment and order of Additional Judge, Special Court, Ludhiana Dated 1.6.1985 by which the respondents were acquitted of the charge of abduction and rape. For what follows, the judgment impugned in this appeal, presents a rather disquietening and a disturbing feature. It demonstrates lack of sensitivity on the part of the court by casting unjustified stigmas on a prosecutrix aged below 16 years in a rape case, by overlooking human psychology and behavioral probabilities. An intrinsically wrong approach while appreciating the testimonial potency of the evidence of the prosecutrix has resulted in miscarriage of justice. First a brief reference to the prosecution case:

The prosecutrix (name withheld by us),a young girl below 16 years of age, was studying in the 10th class at the relevant time in Government High School, Pakhowal. The matriculation examinations were going on at the material time. The examination centre of the prosecutrix was located in the Boys High School, Pakhowal. On 30th March, 1984 at about 12.30 p.m. after taking her test in Geography, the prosecutrix was going to the house of her maternal uncle, Darshan Singh, and when she had covered a distance of about 100 karmas from the school, a blue ambassador car being driven by a sikh youth aged 20/25 years came from behind. In that car Gurmit Singh, Jagjit Singh @ Bawa and Ranjit Singh accused were sitting. The car stopped near her. Ranjit Singh accused came out of the car and caught hold of the prosecutrix from her arm and pushed her inside the car. Accused Jagjit Singh @ Bawa put his hand on the mouth of the prosecutrix, while Gurmit Singh accused threatened the prosecutrix, that in case she raised an alarm she would be done to death. All the three accused (respondents herein)

drove her to the tubewell of Ranjit Singh accused. She was taken to the 'kotha' of the Tubewell. The driver of the car after leaving the prosecutrix and the three accused persons there went away with the car. In the said kotha Gurmit Singh compelled the prosecutrix to take liquor, misrepresenting to her that it was juice. Her refusal did not have any effect and she reluctantly consumed liquor. Gurmit Singh then got removed her salwar and also opened her shirt. She was made to lie on a cot in the kotha while his companions guarded the kotha from outside. Gurmit Singh committed rape upon her. She raised rule as she was suffering pain but Gurmit Singh threatened to kill her if she persisted in raising alarm. Due to that threat, she kept quiet. After Gurmit Singh had committed rape upon her, the other two accused, who were earlier guarding the kotha from outside, came in one by one, and committed rape upon her. Jagjit Singh alias bawa committed rape on her after Gurmit Singh and thereafter Ranjit Singh committed rape on her. Each one of the accused committed sexual intercourse with the prosecutrix forcibly and against her will. They all subjected her to sexual intercourse once again during the night against her will. Next morning at about 6.00 a.m., the same car arrived at the tubewell kotha of Ranjit Singh and the three accused made her to sit in that car and left her near the Boys High School, Pakhowal near about the place from where she had been abducted. The prosecutrix had to take her examination in the subject of Hygiene on that date. She, after taking her examination in Hygeine, reached her village Nangal-Kalan, at about noon time and narrated the entire story to her mother, Smt. Gurdev Kaur, PW7. Her father Trilok Singh PW6 was not present in the house at that time. He returned from his work late in the evening. The mother of the prosecutrix, Smt. Gurdev kaur PW7, narrated the episode to her husband Tirlok Singh PW6 on his arrival. Her father straightaway contacted Sarpanch Joginder Singh of the village. A panchayat was convened. Matter was brought to the notice of the Sarpanch of village Pakhowal also. Both the Sarpanches, tried to affect a compromise on 1.4.1984 but since the panchayat could not give any justice of relief to the prosecutrix, she alongwith her father proceeded to the police station Raikot to lodge a report about the occurrence with the police. When they reached at the bus adda of village Pakhowal, the police met them and she made her statement, Ex. PD, before ASI Raghubir Chand PW who made an endorsement, Ex. PD/1 and sent the statement Ex. PD of the prosecutrix to the police station Raikot for registration of the case on the basis of which formal FIR Ex. PD/2 was registered by SI Malkiat Singh. ASI Raghubir Chand then took the prosecutrix and her mother to the primary health centre Pakhowal for medical examination of the prosecutrix. She was medically examined by lady doctor Dr. Sukhwinder Kaur, PW1 on 2.4.84, who found that the hymen of the prosecutrix was lacerated with fine rediate tears, swollen and painful. Her pubic hair were also found mated. According to PW1 intercourse with the prosecutrix could be "one of the reasons for laceration which I found in her hymen". She went on to say that the possibility could not be ruled out that the prosecutrix "was not habitual to intercourse earlier."

During the course of investigation, the police took into possession a sealed percel handed over by the lady doctor containing the salwar of the prosecutrix alongwith 5 slides of vaginal smears and one sealed phial containing pubic hair of the prosecutrix, vide memo Ex. PK. On the pointing out of the prosecutrix, the investigating officer prepared the rough site plan Ex. PF, of the place from where

she had been abducted. The prosecutrix also led the investigating officer to the tubewell kotha of Ranjit Singh where she had been wrongfully confined and raped. The investigating officer prepared a rough site plan of the Kotha Ex. PM. A search was made for the accused on 2.4.1984 but they were not found. They were also not traceable on 3.4.1984, inspite of a raid being conducted at their houses by the ASI. On 5.4.1984 Jagjit Singh alias Bawa and Ranjit Singh were produced before the investigating officer by Gurbachan Singh and Jagjit Singh on the same day were produced before Dr. B.L. Bansal PW3 for medical examination. The doctor opined that both the accused were fit to perform sexual intercourse. Gurmit Singh respondent was arrested on 9.4.1984 by SI Malkiat Singh. He was also got medically examined on 9.4.1984 from Dr. B.L. Bansal PW3 who opined that Gurmit Singh was also fit to perform sexual intercourse. The sealed parcels containing the slides of vaginal smears, the pubic hair and the salwar of the prosecutrix, were sent to the chemical examiner. The report of the chemical examiner revealed that semen was found on the slides of vaginal smear though no spermatozoa was found either on the pubic hair or the salwar of the prosecutrix. On completion of the investigation, respondents were challaned and were charged for offences under Sections 363, 366, 368, 376 IPC.

With a view to connect the respondents with the crime, the prosecution examined Dr. Sukhwinder Kaur, PW1; Prosecutrix, PW2; Dr. B.L. Bansal, PW3; Tirlok Singh, father of the prosecutrix, PW6; Gurdev Kaur, mother of the prosecutrix, PW7; Gurbachan Singh, PW8; Malkit Singh, PW9 and SI Raghubir hand PW10, besides, some formal witnesses like the draftsman etc. The prosecution tendered in evidence affidavits of some of the constables, whose evidence was of a formal nature as also the report of the chemical examiner, Ex. PM. In their statements recorded under Section 313 Cr. P.C. the respondents denied the prosecution allegations against them. Jagjit Singh respondent stated that it was a false case foisted on him on account of his enemity with the Sarpanch of village Pakhowal. He stated that he had married a Canadian girl in the village Gurdwara, which was not liked to by the sarpanch and therefore the sarpanch was hostile to him and had got him falsely implicated in this case. Gurmit Singh -respondent took the stand that he had been falsely implicated in the case on account of enemity between his father and Tirlok Singh, PW6, father of the prosecutrix. He stated that there was long standing litigation going on between his father and the father of the prosecutrix and their family members were not even on speaking terms with each other. He went on to add that on 1.4.1984 he was given beating by Tirlok Singh PW6, on grounds of suspicion that he might have instigated some persons to abduct his daughter and in retaliation he and his elder brother on the next day had given beating to Tirlok Singh, PW6 and also abused him and on that account Tirlok Singh PW, in consultation with the police had got him falsely implicated in the case. Ranjit Singh respondent also alleged false implication but gave no reasons for having been falsely implicated. Jagjit Singh alias Bawa produced DW-1 Kuldip Singh and DW-2 MHC, Amarjit Singh in defence and tendered in evidence Ex. DC, a photostat copy of his passport and Ex. DD copy of a certificate of his marriage with the Canadian girl. He also tendered into evidence photographs marked ‘C’ and ‘D’, evidencing his marriage with the Canadian girl. The other two accused however did not lead any defence evidence.

The trial court first dealt with the prosecution case

relating to the abduction of the prosecutrix by the respondents and observed:

> "The first point for appreciation before me would arise whether this part of the prosecution story stands fortified by any cogent or reliable evidence or not. There is a bald allegation only of (prosecutrix-name omitted) that she was forcibly abducted in a car. In the F.I.R she stated that she was abducted in an Ambassador Car of blue colour. After going through the evidence, I am of the view that this thing has been introduced by the prosecutrix or by their father or by the thanedar just to give the gravity of offence. (Prosecutrix name omitted) was tested about the particulars of the car and she is so ignorant about the make etc. of the car that entire story that she was abducted in the car becomes doubtful. She stated in her cross-examination at page No.8 that the make of the car was Master. She was pertinently asked whether the make of the car was Ambassador of Fiat. The witness replied that she cannot tell the make of the car. But when she was asked as to the difference between Fiat, Ambassador or Master car, she was unable to explain the difference amongst these vehicles. So, it appears that the allegations that she was abducted in a Fiat Car by all the three accused and the driver, is an imaginary story which has been given either by the thanedar of by the father of the prosecutrix."
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> "If the three known accused are in the clutches of the police, it is not difficult for the I.O. to come to know about the car, the name of its driver etc., but strange enough, SI Raghubir Chand has shown pitiable negligence when he could not find out the car driver inspite of the fact that he directed the investigation on these lines. He had to admit that he made search for taking the car into possession allegedly used in the occurrence. He could not find out the name of the driver nor could he find out which car was used. In these circumstances, it looks to be improbable that any car was also used in the alleged abduction". (Omission of name of the prosecutris - ours)
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> The trial court further commented :
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> "On 30th March, 1984 she was forcibly abducted by four desperate persons who were out and out to molest her honour. It has been admitted by the prosecutrix that she was taken through the bus adda of Pakhowal via metalled road. It has come in the evidence that it is a busy center. Inspite of that fact she has not raised any alarm, so as to attract persons that she was being forcibly

taken. The height of her own unnatural conduct is that she was left by the accused at the same point on the next morning. The accused would be the last person to extend sympathy to the prosecutrix. Had it been so, the natural conduct of the prosecutrix was first torush to the house of her maternal uncle to apprise him that she had been forcibly abducted on the previous day. The witness after her being left at the place of abduction lightly takes her examination. She does not complain to the lady teachers who were deployed to keep a watch on the girl students because these students are to appear in the center of Boys School. She does not complain to anybody nor her friend that she was raped during the previous night. She prefers her examination rather than to go to the house of her parents or relations. Thereafter, she goes to her village Mangal Kalan and informs for the first time her mother that she was raped on the previous night. This part of the prosecution story does not look to be probable."

The trial court, thus, disbelieved the version of the prosecutrix basically for the reasons; (i) "she is so ignorant about the make etc. of the car that entire story that she was abducted in the car becomes doubtful" particularly because she could not explain the difference between a Fiat car, Ambassador car or a Master car; (ii) the investigating officer had "shown pitiable negligence" during the investigation by not tracing out the car and the driver; (iii) that the prosecutrix did not raise any alarm while being abducted even though she had passed through the bus adda of village Pakhowal (iv) that the story of abduction" has been introduced by the prosecutrix or by her father or by the thanedar just to give the gravity of offence" and (v) that no corroboration of the statement of the prosecutrix was available on the record and that the story that the accused had left her near the school next morning was not believable because the accused could have no "sympathy" for her.

The trial court also disbelieved the version of the prosecutrix regarding rape. It found that the testimony of the prosecutrix did not inspire confidence for the reasons (i) that there had been delay in lodging the FIR and as such the chances of false implication of the accused could not be ruled out. According to the trial court Trilok Singh PW6 became certain on 1.4.84 that there was no outcome of the meeting between the panchayats of Nangalkhurd and Pakhowal therefore there was no justification for him not to have lodged the report on 1.4.84 itself and since Trilok Singh had " entered into consultations with his wife as to whether to lodge the report or not, it rendered the matter doubtful." (ii) that the medical evidence did not help the prosecution case. The trial court observed that in her cross-examination PW1 lady doctor had admitted that whereas inter-course with the prosecutrix could be one of the reasons for the laceration of the hymen "there could be other reasons also for that laceration". The trial court noticed that the lady doctor had inserted a vaginal speculum for taking swabs from the posterior vaginal fornix of the

prosecutrix for preparing slides and since the width of the speculum was about two fingers, the possibility that the prosecutrix was habituated to sexual inter-course could not be ruled out". The trial court observed that the prosecutrix was "flighting her imagination in order to rope in the accused persons" and that implicit reliance could not be placed on the testimony "of such a girl"; (iii) there was no independent corroboration of her testimony and (iv) that the accused had been implicated on account of enemity as alleged by the accused in their statements recorded under Section 313 Cr. P.C.

The grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was a student of Xth Class. It was wholly irrelevant and immaterial whether she was ignorant of the difference between a Fiat, an Ambassador or a Master car. Again, the statement of the prosecutrix at the trial that she did not remember the colour of the car, though she had given the colour of the car in the FIR was of no material effect on the reliability of her testimony. No fault could also be found with the prosecution version on the ground that the prosecutrix had not raised an alarm while being abducted. The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car5 she was threatened by the accused to keep quiet and not to raise any alarm otherwise she would be killed. Under these circumstances to discredit the prosecutrix for not raising an alarm while the car was passing through the Bus Adda is traverisity of justice. The court over-looked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alram. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how car that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. Trial Court fell in error for discrediting the testimony of the prosecutrix on that account. In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. The prosecution has explained that as soon as Trilok Singh PW6, father of the prosecutrix came to know from his wife, PW7 about the incident he went to the village sarpanch and complained to him. The sarpanch of the village also got in touch with the sarpanch of village Pakhowal, where in the tube well kotha of Ranjit Singh rape was committed, and an effort was made by the panchayats of the two villages to sit together and settle the matter. It was only when the Panchayats failed to provide any relief or render any justice to the prosecutrix, that she and her family decided to report the matter to the

police and before doing that naturally the father and mother of the prosecutrix discussed whether or not to lodge a report with the police in view of the repercussions it might have o n the reputation and future prospects of the marriage etc. of their daughter. Trilok Singh PW6 truthfully admitted that he entered into consultation with his wife as to whether to lodge a report or not and the trial court appears to have misunderstood the reasons and justification for the consultation between Trilok Singh and his wife when it found that the said circumstance had rendered the version of the prosecutrix doubtful. Her statement about the manner in which she was abducted and again left near the school in the early hours of next morning has a ring of truth. It appears that the trial court searched for contradictions and variations in the statement of the prosecutrix microscopically, so as to disbelieve her version. The observations of the trial court that the story of the prosecutrix that she was left near the examination center next morning at about 6 a.m. was "not believable" as 'the accused would be the last persons to extend sympathy to the prosecutrix" are not at all intelligible. The accused were not showing "any sympathy" to the prosecutrix while driving her at 6.00 a.m. next morning to the place from where she had been addicted but on the other hand were removing her from the kotha of Ranjit Singh and leaving her near the examination center so as to avoid being detected. The criticism by the trial court of the evidence of the prosecutrix as to why she did not complain to the lady teachers or to other girl students when she appeared for the examination at the center and waited till she went home and narrated the occurrence to her mother is unjustified. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court over-looked that a girl, in a tradition bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination center under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others over-powered by a feeling of shame and her natural inclination would be to avoid talking about it to any one, lest the family name and honour is brought into controversy. Therefore her informing to her mother only on return to the parental house and no one else at the examination center prior thereto is an accord with the natural human conduct of a female. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for

corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In State of Maharashtra Vs. Chandraprakash Kewalchand Jain (1990 (1) SCC 550) Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words:

> "A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the

> evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecurtix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction of 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 disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

We are in respectful agreement with the above exposition of law. In the instant case our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness. Her testimony suffers from no infirmity or blemish whatsoever. We have no hesitation in acting upon her testimony alone withoutlooking for any ‘corroboration’. However, in this case there is ample corroboration available on the record to lend further credence to the testimony of the prosecutrix.

The medical evidence has lent full corroboration to the testimony of the prosecutrix. According to PW1 lady Doctor Sukhvinder Kaur she had examined the prosecutrix on 2.4.84 at about 7.45 p.m. at the Primary Health Center, Pakhowal, and had found that "her hymen was lacerated with fine rediate tears, swollen and painful". The pubic hair were also found mated. She opined that inter-course with the prosecutrix could be "one of the reason for the laceration of the hymen" of the prosecutrix. She also opined that the "possibility cannot be ruled out that (prosecutrix) was not habitual of inter-course earlier to her examination by her on 2.4.84". During her cross-examination, the lady doctor admitted that she had not inserted her fingers inside the vagina of the prosecutrix during the medico-legal examination but that she had put a vaginal speculum for taking the swabs from the posterior vaginal fornix for preparing the slides. She disclosed that the size of the speculum was about two fingers and agreed with the suggestion made to her during her cross-examination that "if the hymen of a girl admits two fingers easily, the possibility that such a girl was habitual to sexual inter-course cannot be ruled out". However, no direct and specific question was put by the defence to the lady doctor whether the prosecutrix in the present case could be said to be habituated to sexual intercourse and there was no challenge to her statement that the prosecutrix ‘may not have been subjected to sexual intercourse earlier’. No enquiry was made from the lady doctor about the tear of the hymen being

old. Yet, the trial court interpreted the statement of PW1 Dr.Sukhwinder Kaur to hold that the prosecutrix was habituated to sexual inter-course since the speculum could enter her vagina easily and as such she was "a girl of loose character". There was no warrant for such a finding and the finding if we may say so with respect, is a wholly irresponsible finding. In the face of the evidence of PW1, the trial court wrongly concluded that the medical evidence had not supported the version of the prosecutrix.

The trial court totally ignored the report of the Chemical Examiner Ex. PM, according to which semen had been found on the slides which had been prepared by the lady doctor from the vaginal secretions from the posterior of the vaginal fornix of the prosecutrix. The presence of semen on the slides lent authentic corroboration to the testimony of the prosecutrix. This vital evidence was foresaken by the trial court and as a result wholly erroneous conclusions were arrived at. Thus, even though no corroboration is necessary to rely upon the testimony of the prosecutrix, yet sufficient corroboration from the medical evidence and the report of the chemical examiner is available on the record. Besides, her statement has been fully supported by the evidence of her father, Tirlok Singh, PW6 and her mother Gurdev Kaur, PW7, to whom she had narrated the occurrence soon after her arrival at her house. Moreover, the unchallanged fact that it was the prosecutrix who had led the investigating officer to the Kotha of the tubewell of Ranjit Singh, where she had been raped, lent a built-in assurance that the charge levied by her was "genuine" rather than "fabricated" because it is no one's case that she knew Ranjit Singh earlier or had ever seen or visited the kotha at his tubewell. The trial court completely overlooked this aspect. The trial court did not disbelieve that the prosecutrix had been subjected to sexual intercourse but without any sound basis, observed that the prosecutrix might have spent the "night" in the company of some "persons" and concocted the story on being asked by her mother as to where she had spent the night after her maternal uncle, Darshan Singh, came to Nangal-Kalan to enquire about the prosecutrix. There is no basis for the finding that the prosecutrix had spent the night in the company of "some persons" and had indulged in sexual intercourse with them of her own free will. The observations were made on surmises and conjectures - the prosecutrix was condemned unheard.

The trial court was of the opinion that it was a 'false' case and that the accused had been implicated on account of enemity. In that connection it observed that since Trilok Singh PW6 had given beating to Gurmit Singh on 1.4.84 suspecting his hand in the abduction of his daughter and Gurmit Singh accused and his elder brother had abused Trilok Singh and given beating to Tirlok Singh PW6 on on 2.4.84, "it was very easy on the part of Trilok Singh to persuade his daughter to name Gurmit Singh so as to take revenge". The trial court also found that the relations between the family of Gurmit Singh and of the prosecutrix were strained on account of civil litigation pending between the parties for 7/8 years prior to the date of occurrence and that was also the 'reason' to falsely implicate Gurmit Singh. Indeed, Gurmit Singh accused in his statement under Section 313 Cr. P.C. did raise such a plea but that plea has remained unsubstantiated. Trilok Singh PW6 categorically denied that he had any litigation with the father of Gurmit Singh at all and went on to say that no litigation had ever taken place between him and Mukand Singh father of Gurmit singh over a piece of land or otherwise. To the similar

effect is the statement of Gurdev Kaur PW7 who also categorically stated that there had been no litigation between her husband and Mukand Singh father of Gurmit Singh. The trial court ignored this evidence and found support for the plea of the accused from the statement of the prosecutrix in which during the first sentence of her cross-examination she admitted that litigation was going on between Mukund Singh father of Gurmit Singh and her father for the last 8/9 years over a piece of land. In what context the statement was made is not clear. Moreover, the positive evidence of PW6 and PW7 that there was no litigation pending between PW6 and PW7 that there was no litigation pending between PW6 and the father of Gurmit Singh completely belied the plea of the accused. If there was any civil litigation pending between the parties as alleged by Gurmit Singh he could have produced some documentary proof in support thereof but none was produced. Even Mukand Singh, father of Gurmit Singh did not appear in the witness box to support the plea taken by Gurmit Singh. The allegation regarding any beating given to Gurmit Singh by PW6 and to PW6 by Gurmit Singh and his brother was denied by PW6 and no material was brought forth in support of that plea either and yet the trial court for undisclosed reasons assumed that the story regarding the beating was correct. Some stray sentences in the statement of the proseuctrix appear to have been unnecessarily blown out of all proportion to hold that "admittedly" PW6 had been given given beating by Gurmit Singh accused and that there was civil litigation pending between the father of the prosecutrix and the father of Gurmit Singh to show that the relations between the parties were enemical. There is no acceptable material on the record to hold that there was any such civil litigation pending between the parties. Even if it be assumed for the sake of argument that there was some such litigation, it could hardly be a ground for a father to put forth his daughter to make a wild allegation of rape against the son of the opposite party, with a view to take revenge. It defies human probabilities. No father could stoop so low as to bring forth a false charge of rape on his unmarried minor daughter with a view to take revenge from the father of an accused on account of pending civil litigation. Again, if the accused could be falsely involved on account of that enemity, it was equally possible that the accused could have sexually assaulted the prosecutrix to take revenge from her father, for after all, enemity is a double edged weapon, which may be used for false implication as well as to take revenge. In any case, there is no proof of the existence of such enemity between PW6 and the father of Gurmit Singh which could have prompted PW6 to put up his daughter to falsely implicate Gurmit Singh on a charge of rape. The trial court was in error to hold that Gurmit Singh had been implicated on account of enemity between the two families and for the beating given by Gurmit Singh and his brother to PW6, in retaliation of the beating given by PW6 to Gurmit Singh on 1.4.1984. Similarly, so far as Jagjit Singh respondent is concerned, the trial court opined that he could have been got implicated at the instance of the Sarpanch of village Pakhowal, who was hostile to Jagjit Singh. The ground of hostility as given by Jagjit Singh against the Sarpanch of village Pakhowal stems out of the fact that the sarpanch was annoyed with him for marrying a Canadian girl in the village Gurdwara. There is no evidence whatsoever on the record to show that the Sarpanch of village Pakhowal had any relationship of connection with the prosecutrix or her father or was in any way in a apposition to exhert so much

of incluence on the prosecutrix or her family, that to settle his score Trilok Singh PW6 would put forward his daughter to make a false allegation of rape and thereby jeopardise her own honour and future prospects of her marriage etc. The plea of Jagjit Singh alias Bawa like that of Gurmit Singh did not merit acceptance and the trial court erroneously accepted the same without any basis. The Plea of the accused was a plea of despair not worthy of any credence. Ranjit Singh, apart from stating that he had beenfalsely implicated in the case did not offer any reasons for his false implication. It was at his tubewell kothe that rape had been committed on the prosecutrix. She had pointed out that kotha to the police during investigation. No ostensible rason has been suggested as to why the prosecutrix would falsely involve Ranjit Singh for the commission of such a heinous crime and nominate his kotha as the place where she had been subjected to sexual molestation by the respondents. The trial court ignored that it is almost inconceivable that an unmarried girl and her parents would go to the extent of staking their reputation and future in order to falsely set up a case of rape to settle petty scores as alleged by Jagjit Singh and Gurmit Singh respondents.

From the statement of the prosecutrix, it clearly emerges that she was abducted and forcibly subjected to sexual intercourse by the three respondents without her consent and against her will. In this fact situation the question of age of the prosecutrix would pale into insignificance. However, in the present case, there is evidence on the record to establish that on the date of the occurrence, the prosecutrix was below 16 years of age. The prosecutrix herself and her parents deposed at the trial that her age was less than 16 years on the date of the occurrence. Their evidence is supported by the birth certificate Ex. PJ. Both Tirlok Singh PW6 and Gurdev Kaur PW7, the father and mother of the prosecutrix respectively, explained that initially they had named their daughter, the prosecutrix, as Mahinder Kaur but her name was changed to .... (name omitted), as according to The holy Guru Granth Sahib her name was required to start with the word "chhachha" and therefore in the school leaving certificate her name was correctly given. There was nothing to disbelieve the explanation given by Trilok Singh and Gurdev Kaur in that behalf. The trial court ignored the explanation given by the parents observing that "it could not be swallowed being a belated one". The trial court was in error. The first occasion for inquiring from Trilok Singh PW6 about the change of the name of the prosecutrix was only at the trial when he was asked about Ex. PJ and there had been no earlier occasion for him to have made any such statement. It was, therefore, not a belated explanation. That apart, even according to the lady doctor PW1, the clinical examination of the prosecutrix established that she was less than 16 years of age on the date of the occurrence. The birth certificate Ex. PJ was not only supported by the oral testimony of Trilok Singh PW6 and Gurdev Kaur PW7 but also by that of the school leaving certificate mark ‘B’. With a view to do complete justice, the trial court could have summoned the concerned official from the school to prove various entries in the school leaving certificate. From the material on the record, we have come to an unhesitating conclusion that the prosecutrix was less than 16 years of age when she was made a victim of the lust of the respondents in the manner deposed to by her against her will and without her consent. The trial court did not return

any positive finding as to whether or not the prosecutrix was below 16 years of age on 30th March 1984 and instead went on to observe that 'even assuming for the sake of argument that the prosecutrix was less than 16 years of age on 30th March 1984, it could still not help the case as she was not a reliable witness and was attempting to shield her own conduct by indulging in falsehood to implicate the respondents'. The entire approach of the trial court in appreciating the prosecution evidence and drawing inferences therefrom was erroneous.

The trial court not only erroneously disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterised her as a girl "of loose morals" or "such type of a girl".

What has shocked our judicial conscience all the more is the inference drawn by the court, based on no evidence and not even on a denied suggestion, to the effect:

> "The more probability is that (prosecutrix) was a girl of loose character. She wanted to dupe her parents that she resided for one night at the house of her maternal uncle, but for the reasons best known to her she does not do so and she preferred to give company to some persons."

We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Such like stigmas have the potential of not only discouraging an even otherwise reductant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society to suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole-where the victim of crime is discouraged - the criminal encouraged and in turn crime gets rewarded! Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone had everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the Courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court.

As a result of the aforesaid discussion, we find that the prosecutrix has made a truthful statement and the prosecution has established the case against the respondents beyond every reasonable doubt. The trial court fell in error in acquitting them of the charges levelled against them. The appreciation of evidence by the trial court is not only unreasonable but perverse. The conclusions arrived at by the trial court are untenable and in the established facts and circumstances of the case, the view expressed by it is not a possible view. We, accordingly, set aside the judgment of the trial court and convict all the three respondents for offences under Sections 363/366/368 and 376 IPC. So far as the sentence is concerned, the court has to strike a just

balance. In this case the occurrence took place on 30.3.1984 (more than 11 years ago). The respondents were aged between 21-24 years of age at the time when the offence was committed. We are informed that the respondents have not been involved in any other offence after they were acquitted by the trial court on 1.6.85, more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settled down in life. These are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents. We accordingly sentence the respondents for the offence under Section 376 IPC to undergo five years R.I. each and to pay a fine of Rs. 5000/- each and in default of payment of fine to 1 year's R.I. each. For the offence under Section 363 IPC we sentence them to undergo three years R.I. each but impose no separate sentence for the offence under Section 366/368 IPC. The substantive sentences of imprisonment shall, however, run concurrently.

This Court, in Delhi Domestic Working Women's Forum Vs. Union of India, (1995 (1) SCC 14), had suggested, on the formulation of a scheme, that at the time of conviction of a person found guilty of having committed the offence of rape, the Court shall award compensation.

In this case, we have, while convicting the respondents, imposed, for reasons already set out above, the sentence of 5 years R.I. with fine of Rs.5000/- and in default of payment of fine further R.I. for one year on each of the respondents for the offence under Section 376 IPC. Therefore, we do not, in the instant case, for those very reasons, consider it desirable to award any compensation, in addition to the fine already imposed, particularly as no scheme also appears to have been drawn up as yet.

Before, parting with the case, there is one other aspect to which we would like to advert to.

OF late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspirers confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime i being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence.

The alarming frequency of crime against women led the Parliament to enact Criminal Law (Amendment) Act, 1983 [Act 43 of 1983] to make the law of rape more realistic. By the Amendment Act, Sections 375 and 376 were amended and certain more penal provisions were incorporated for punishing such custodians who molest a women under their custody or care. Section 114-A was also added in the Evidence Act for drawing a conclusive presumption as to the absence of consent in certain prosecutions for rape, involving such custodians. Section 327 of the Code of Criminal Procedure which deals with the right of an accused to an open trial was also amended by addition of sub-sections 2 and 3 after re-numbering the old Section as sub-section (1). Sub-sections 2 and 3 of Section 327 Cr. P.C. provide as follows :

> Section 327. Court to be open -
>
> (2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code shall be conducted in camera :
>
> Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or buildingused by the Court.
>
> (3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court."

These two provisions are in the nature of exception to the general rule of an open trial. Inspite of the amendment, however, it is seen that the trial courts either are not conscious of the amendment or do not realise its importance

for hardly does one come across a case where the enquiry and trial of a rape case has been conducted by the court in camera. The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub-section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P.C. and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. The High Courts would therefore be well advised to draw the attention of the trial courts to the amended provisions of Section 327 Cr. P.C. When trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the Court as envisaged by Section 327 (3) Cr. P.C. This would save any further embarrassment being caused to the victim of sex crime. Wherever possible it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the Courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The Courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial Courts would take recourse to the provisions of Sections 327 (2) and (3) Cr. P.C. liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.