

**IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS
JUDGE-II (NORTH-WEST): ROHINI COURTS: DELHI.**

Sessions Case No. 1159/2009

Unique Case ID: 02404R0285032009

State Vs. 1. Dinesh Yadav
S/o Ram Kishore Yadav,
R/o A-428/429, Gujjar Chowk,
Bhalaswa Dairy, Delhi
(Convicted)

2. Bhagwati Devi
W/o Dinesh Yadav
R/o A-428/429, Gujjar Chowk,
Bhalaswa Dairy, Delhi
(Acquitted)

FIR No. : 138/2009
**Under Section : 376/506/109/34 Indian penal
Code.**
Police Station : Swaroop Nagar

Date of committal to Sessions Court : 29.10.2009

Judgment reserved on : 24.3.2011

Judgment pronounced on : 21.4.2011

JUDGMENT

Brief Facts:-

The allegations against the accused Dinesh Yadav are that for the post about four years prior to 13.6.2009 at House No. 428/429, Gujjar Chowk, Bhalaswa Dairy, Delhi, he had been committing rape with his stepdaughter namely 'A' **(name of the girl**

is withheld as this is a case under Section 376 read with Section 109 and 506/34 Indian Penal Code), aged about 15 years, against her wishes and consent and also criminally intimidated her in connivance with his wife Bhagwati Devi (i.e. co-accused and the natural mother of the prosecutrix) with a threat to kill her in case she disclosed about the aforesaid facts to anyone and thereby both i.e. accused Dinesh Yadav and Bhagwati Devi have committed the offence under Section 376 read with Section 506 Part-II and Section 109 Indian Penal Code.

Case of Prosecution in brief:-

The prosecution case in brief is that on 13.06.2009 the prosecutrix 'A' came in the police station and told SI Durga Kapri that she was residing in a rented house and was studying in 10th class in a government school at K Block, Jahangirpuri, Delhi. She further informed SI Durga Kapri that after the demise of her father, her mother Bhagwati Devi remarried to Dinesh Yadav and from this wedlock, they are having five children. The prosecutrix further told SI Durga Kapri that her stepfather Dinesh Yadav had been committing rape with her for last four years against her wishes and when she informed her mother Bhagwati Devi about the same, she advised her to keep silent and both Dinesh Yadav and Bhagwati told her not to tell anybody and threatened to kill her and therefore out of fear she did not inform anybody. The prosecutrix further informed SI Durga Kapri that prior to one week of the present incident, her mother had left the house and gone away without saying anything and her stepfather Dinesh Yadav had also gone to his village for the

about 10-12 days prior to the incident when he suddenly returned on the intervening night of 12-13.06.2009 at about 12:00 at night on which she gave him food. Thereafter when she was going to sleep, her stepfather Dinesh Yadav pulled her chunni and caught hold of her hands and tried to commit rape with her on which she raised an alarm and the neighbours gathered at the spot and advised her to inform the matter to the police but since she was scared at that time she did not go to the police station and on next morning she along with Harish Chander whom she treated as brother came to the police station.

SI Durga Kapri recorded the statement of prosecutrix 'A' and the present FIR was got registered. The prosecutrix was medically examined at Babu Jagjivan Ram Memorial Hospital. The accused were arrested at the instance of the prosecutrix, statement of the prosecutrix was got recorded under Section 164 Cr.PC before Ld. MM, the exhibits were sent to the FSL for examination and after completing the investigations, charge sheet was filed before the court.

CHARGE:

Ld. predecessor of this court settled charges under **Section 376** read with **Section 506 (Part-II) Indian Penal Code** and **Section 354 Indian Penal Code** against the accused Dinesh Yadav. This court has also settled the charges under **Section 376** read with **Section 109** and **Section 506 / 34 Indian Penal Code** against the accused Bhagwati Devi. Both the accused have pleaded not guilty and claimed trial.

EVIDENCE:

In order to discharge the onus upon it, the prosecution has examined as many as **fifteen** witnesses.

Public Witnesses / Prosecutrix:

PW6 Kumari 'A' (prosecutrix) (name of the girl is withheld as this is a case under Section 376 read with Section 109 and 506/34 Indian Penal Code) has been examined in Camera proceedings conducted in the Chamber. The prosecutrix has deposed that prior to coming to the court she was at Children Home where she was residing for the last one year i.e. after the registration of the present FIR. She has further deposed that her date of birth is 02.02.1994 and at the time of incident she was studying in 10th class in MCD School, K-Block, Jahangir Puri, Delhi. She deposed that accused Dinesh Yadav is her step father and Bhagwati Devi is her real mother. She further deposed that her real father had expired when she was almost four to five years old and thereafter her mother got married to the accused Dinesh Yadav, her step father. She deposed that after the marriage of her mother with Dinesh Yadav, her mother begot four daughters and one son who are all younger to her. The prosecutrix has further deposed that ever-since she was 10-12 years old her step father Dinesh Yadav (accused before this court) had been forcibly trying to make physical relations with her despite her opposition and without her consent. She has deposed that her step father Dinesh Yadav made physical relations with her on two / three occasions before the registration of the present case. She has

further deposed that when she informed her mother Bhagwati Devi about what her step father was doing with her and when her mother Bhagwati Devi confronted Dinesh Yadav as to why he was doing this to her, the accused Dinesh Yadav started beating her mother and threatened to kill her and also threatened to kill her other brothers and sisters. Witness has further deposed that on one occasion Dinesh Yadav even broke the hand of her mother Bhagwati Devi when she objected but he still did not desist from his acts. The prosecutrix has also deposed that her father i.e. accused Dinesh Yadav committed rape upon her in the month of June 2009 and when she told her mother about the same and her mother again objected to her father, the accused gave beatings to her (mother) and threatened her on which her mother went away somewhere and later on they came to know that she had gone to her Mama's house in the village. The prosecutrix has further deposed that her step father Dinesh Yadav also went to his village and after one week, he returned home at about 12:00/ 12:30 midnight on the intervening night of 12-13.6.2009. According to the prosecutrix, she prepared food for him and that after giving him food when she was going to sleep when her step father Dinesh Yadav pulled her Chunni and switched off the lights and thereafter caught hold of her hand and again started doing 'Zabardasti with her on which she raised an alarm. She further deposed that her brothers and sisters who were sleeping in the room, woke up on hearing her voice and her neighbours also woke up on which she told them what her father was doing. She has deposed that one of her neighbours whom she called Harish Bhai also came to the

spot and she narrated what had happened on which she was advised by everybody to go to police station. According to her, in the morning one aunty from the neighbourhood namely Sangeeta aunty and Harish Bhai took her to police station where she got the present case registered. She has identified her statement recorded in the police station which is **Ex.PW1/C** bearing her signatures at point A. She has proved having given her address and shown the place where the incident had taken place to the police officers who prepared the site plan on her pointing out which is **Ex.PW6/A**. She has also proved that she was thereafter taken to Babu Jagjivan Ram Memorial Hospital (BJRM) where her medical examination was got conducted vide MLC **Ex.PW4/B** after which she was sent to Children Home. She deposed that she was also produced before the Ld. MM, Rohini where her statement was recorded. She has proved the proceedings under Section 164 Cr.P.C. conducted by Sh. Satish Kumar, Ld. MM which are collectively **Ex.PW6/B** (running into five pages including the applications). The witness/ prosecutrix has identified her signatures on her statement made before the Ld. MM which statement is **Ex.PW6/C** bearing her signatures at point A. She further deposed that her step father Dinesh Yadav was arrested on the same date i.e. 13.6.2009 on her pointing out vide arrest memo **Ex.PW6/D** bearing her signatures at point A. According to the witness, her statement was thereafter recorded by the investigating officers. Witness has correctly identified her step father Dinesh Yadav and her mother Bhagwati in the court. She has stated that Bhagwati had gone to the police station to make inquiries when she

was arrested.

In her cross examination, the witness has admitted that whenever she told her mother about the acts of her father, her mother opposed the same but her father used to beat her mother. Witness has also admitted that the accused was initially doing the business of Thekedari which he left and later he did not do anything and used to consume alcohol regularly. According to the witness her mother had opened a tea stall and their expenses were being met from the same. In her cross examination, witness is not aware that whether her father used to bring Ganja from Bihar and sell the same in Delhi but states that she only knew that her step father used to go to Bihar at-least one or two times in a month and also used to get something but is not aware of what he used to bring. She has denied the suggestion that her mother was a partner with her father in this trade of sale of Ganja which her father used to bring from Bihar and has stated that her mother was infact running a tea stall. Witness is further unable to tell that how much money her father had deposited in her bank account in her name or how many Indira Vikas Patras her father has made in her name. She has denied the suggestion that Harish Chand whom witness called Harish Bhai is also indulging in sale of Ganja and states that Harish Bhai is a student and is studying in class 12th and his father is working in the vegetable/ fruit mandi. According to the witness the house of Harish is situated in the gali next to her gali. She has further deposed that on the intervening night of 12-13.6.2009 when her father attempted to rape her, Harish was present at his house. She further deposed that on hearing her cries all persons

residing in all the rooms of the same building came out and collected. She deposed that there were 8 rooms in the same building which all were occupied with tenants and every body came out. Witness is not aware about the names of such persons who had collected but knew one aunty by the name of Sangeeta and other ladies who had come were the mothers of Amarjeet, Sanjeet and Vishal. Witness is unaware about the names of all the adult persons staying in the same building but states that most of these tenants were males and she had no interaction with them. According to the prosecutrix, the name of father of Vishal is Mr. Sharma but witness did not know the names of the fathers of Amarjeet and Sanjeet. Witness has further deposed that the aunty who had taken her to police station had also come to the spot at night when she had raised hue and cry. Witness is not aware if the police had recorded the statement Sangeeta aunty. According to the witness, the police had come to the spot i.e. room where she was residing and on seeing them many persons had gathered there including Sangeeta. Witness states that the gali where her house is situated is open from both sides and at the time when the police came to the spot, there were not many passers-by and only residents of that gali had come out. She has further deposed that when she showed the room to the police they had simply examined the place and the surroundings. She has further deposed that in her presence no written work was done by the police at the spot but they had only examined the spot. Witness has admitted that the site plan was not prepared by the police at the spot but states that they prepared the same later and showed it to her. Witness states that during the night

when her father had come to her room, her brothers and sisters were also there but Harish was not present at her house. According to the witness, Harish was called from his house by some neighbours after she had raised a hue and cry. Witness has admitted that Harish used to come to her house in the absence of her parents and according to her, he is her '*Muh bola bhai*' and he used to come to her room frequently. She has denied the suggestion that she was having physical relations with Harish which was being objected to her father and on the date of incident her father had seen her with Harish and he objected due to which reason she has falsely implicated her step father Dinesh Yadav in the present case at the instance of Harish.

PW13 Harish Chander has in his examination in chief, deposed that he knew the prosecutrix 'A' as she used to reside with her parents, brother and sister in the same tenanted house in which he was living in Bhalswa Dairy. The witness knew her for the last three years as she used to tie rakhi in his hand on rakshabandhan and witness also used to regard her as his sister. Witness has correctly identified the accused Dinesh Yadav who is the father of 'A' and accused Bhagwati who is the mother of 'A' but this witness is not aware whether the accused Dinesh Yadav is the step father of 'A' In his initial deposition the witness has stated that it was the sixth or seventh month of year 2009 when he was present at his house and it was in the late night that he saw that two or three persons passing through the gali and after seeing those persons in the gali he was coming back inside his house to sleep when the prosecutrix 'A' met him there at her house and on seeing him she told him that a quarrel

had taken place with her neighbours, on which he advised her to sleep rather than to see the quarrel. Witness has deposed that on the next day morning, he took 'A' at police station Swaroop Nagar but since at that time as his mother was ill in his village and he had to leave his father to the station he, therefore, came back from the police station after leaving 'A' at the police station. Witness has further deposed that thereafter he never went to the police station. Witness initially stated that he did not know if 'A' had lodged any report against accused Dinesh Yadav. Witness has also stated that police had interrogated him but did not record his statement and according to him, 'A' did not make any complaint to him against accused Dinesh Yadav and he did not know anything else about this case.

It is evident from the above statement that the witness was suppressing some facts since there was no occasion for him to leave the prosecutrix at the Police Station in the morning in case if nothing had happened at night. Hence, after due permission from this court the Ld. Additional Public Prosecutor cross-examined this witness wherein he (Harish Chander) has admitted that at 12:30 AM when he saw the crowd outside the house of 'A', he went there, and found 'A' present there and he was told by the public persons that Dinesh Yadav had come outside from the house and ran away. He has further admitted that 'A' had told him that Dinesh Yadav her step father reached home at night and had tried to rape her and when he pulled her chunni she raised an alarm on which the public persons gathered and one seeing them he ran away. Witness further admitted

that at that time no elder person was present in the house of 'A' and he tried to console the prosecutrix. Witness states that it was during this that 'A' had told him that even 10-15 days back the accused Dinesh Yadav had committed rape upon her and she told Bhagwati about this but Bhagwati kept quite. Harish has also admitted that 'A' also told him that when she tried to oppose this act of her father he threatened her and Bhagwati being fed up went away after leaving her and other children. He has further admitted that Dinesh Yadav had gone out somewhere and was not available in the area and it was on the date of the incident that in the intervening night of 12-13.06.2009 that he had returned in the night. Witness Harish has however denied the suggestion of the Id. Addl. Public Prosecutor that he had seen Dinesh Yadav running away from the spot but admits that a crowd had gathered and also states that it was 'A' who told him that Dinesh Yadav had run away. Witness has further admitted that he left 'A' at the police station and thereafter had gone to leave his father at the railway station and after his return his statement was recorded. Witness has correctly identified the accused Dinesh Yadav by pointing out towards him but is not aware of his name and has also correctly identified the accused Bhagwati.

In his cross examination, the witness has admitted that he is not a witness to any incident and whatever he has deposed was only on the basis of what was told to him by 'A'. Witness has also stated that at the time when he reached the spot there was a crowd of 5 to 6 persons and the persons staying next to the room of 'A' were also present but he is unable to tell their names and has explained that

people keep shifting out frequently for which reason he does not know their names. Witness has denied the suggestion that there was no incident and no body had gathered. Witness has also stated that at the time when he saw the prosecutrix in the crowd, she did not appear perturbed or scared but she appear to be normal. He has admitted that prior to this incident, the prosecutrix had never told him about any objectionable act of her step father and also admits that prosecutrix had no problems or complaints with her mother. According to the witness, his house is at a distance of about 300 yards from the house of prosecutrix as it is at different gali and admits that whenever an alarm is raised at the house of the prosecutrix, the voice cannot heard at his house. Witness has however stated that that he had heard the alarm because it was summer season and he could not sleep due to which reason he was taking stroll outside. Witness has explained that the house of prosecutrix is visible from his house and he was outside his house when he heard the alarm. He has denied the suggestion that the house of prosecutrix is in the gali behind his house and has explained that it is in the opposite direction with a slight gap between the two galies. According to Harish, no person came there from his gali and he was the only one. He has stated that the police did not reach the spot in his presence and his statement was not recorded by the police. He has denied the suggestion that his statement **EX PW 13/DX1** was recorded by the police. He has also denied the suggestion that he did not hear any alarm because there was no such incident or that he was having an affair with prosecutrix and when he was caught by her

step father, she made allegations against him at his instance.

Medical Evidence:

PW4 Dr. J. P. Palyia has deposed in his examination in chief that on 13.6.09 he was posted as Casualty Medical Officer, BJRM Hospital and on that day patient Dinesh Yadav was brought to the hospital for medical examination by Ct. Manoj with the alleged history of committing sexual assault. Witness further deposed that on examination his vitals were within normal limits and systemic examination was NAD clinically and no fresh external injuries were seen and thereafter the patient was referred to Senior Resident Surgery Sh. Raj Kumar. According to the witness he prepared the MLC of patient Dinesh Yadav which is **Ex.PW4/A** bearing his signatures at point A & B and the signatures of Dr. Raj Kumar, Senior Resident Surgery at point C and the report of Dr. Raj Kumar, Senior Resident Surgery is Mark X. The witness has identified the handwriting and signatures of Dr. Raj Kumar having seen him signing and writing during the course of official duties as witness has worked with him. After seeing the MLC of the prosecutrix which is **Ex.PW4/B** he has identified the signatures of Dr. Mahesh at point A and has deposed that this MLC was prepared by Dr. Mahesh a Junior Resident, who has left the services from BJRM Hospital and his whereabouts are not known. He has also identified the handwriting and signatures of Dr. Mahesh having seen him signing and writing during the course of official duties as witness has worked with him. The witness also identified the signatures of Dr. Bhavana

at point B in MLC No. 3111 who was CMO on duty on that day, as witness have seen her signing and writing during the course of official duties. He has not been cross examined on behalf of the accused despite opportunity in this regard.

Police/ Official Witnesses:

PW1 HC Jatan Singh has been examined by way of affidavit which is **Ex.PW1/A** bearing his signatures at point A and B. He has proved the copy of FIR which **Ex.PW1/B** bearing his signatures at point A and copy of endorsement on the rukka which is **Ex.PW1/C** bearing his signatures at point A. He has not been cross examined on behalf of the accused despite opportunity in this regard.

PW2 Ct. Rajender Singh has also been examined by way of affidavit being formal witness which affidavit is **Ex.PW2/A** bearing his signatures at point A and B. He has not been cross examined on behalf of the accused despite opportunity in this regard.

PW3 HC Sripal has been examined by way of affidavit being formal witness which affidavit is **Ex.PW3/A** bearing his signatures at point A and B. He has proved the relevant entry in Register No. 19 i.e. Entry No.435 copy of which is **Ex.PW3/B** bearing his signature at point A and the copy of RC No. 37/21/09 dated 17.7.09 which is **Ex.PW3/C**. He has not been cross examined on behalf of the accused despite opportunity in this regard.

PW5 Dr. Anita Vats, Principal, Government Girls Sr. Sec. School, K. Block, Jahangir Puri has brought the summoned record pertaining to the prosecutrix 'K' D/o Dinesh Yadav (accused).

She has also brought the admission register of the school in respect of the prosecutrix whose name is mentioned at S. No. 6697 dated 06.04.2005. The copy of the relevant entry in this register is **Ex.PW5/A** at point A. The witness has further deposed that the prosecutrix was admitted to her school on the basis of School leaving certificate issued by MCD Primary School, Bhalsawa Dairy, Delhi and according to which the date of birth of 'K' is **02.02.1994**, showing that on the date of the incident, the prosecutrix was aged about 15 years. She has proved the copy of the said School Leaving Certificate which is **Ex.PW5/B** and copy of admission form which is **Ex.PW5/C**. She has not been cross examined on behalf of the accused despite opportunity in this regard.

PW8 Dr. Rajendra Kumar who is the Assistant Director, FSL, Rohini has deposed that on 17.07.2009 two sealed parcels as per forwarding letter were received in the laboratory from the SHO PS Swaroop Nagar, Delhi in connection with case FIR No. 138/09 dated 13.06.2009 U/s 376/506 IPC. It is justified that Parcel S-1 was sealed with the seal of MS BJRMH J Puri Delhi and contains exhibits S-1a and S-1b i.e. two micro slides having faint whitish smere. It is also justified that Parcel S-2 was sealed with the seal of MS BJRMH J Puri Delhi and contains exhibits S-2 i.e. dark brown foul smelling liquid. Witness deposed that on biological examination blood was detected on Ex.S-2 and semen could not be detected on Ex.S-1a and Ex.S-1b. Witness further deposed that on serological examination Ex.S-2 i.e. blood sample was found to be putrified hence no opinion was given. The witness has deposed that his detailed

report in this regard is **Ex.PW8/A** containing biological and serological report and bearing his signature at point A and B.

In his cross examination, witness states that he is M.Sc./Ph.D in Zoology and he is competent to prepare the report. Witness accepted that his report regarding presence of semen is negative.

PW9 Lady Ct. Poonam has in her examination in chief, deposed that on 28.01.2010 she was posted at police station Swaroop Nagar and on that day she alongwith investigating officer ASI Daya Nand reached at WZ-315, Village Shakur Pur, Delhi where the accused Bhagwati Devi was interrogated by the investigating officer in her presence and arrested in this case vide memo **Ex.PW9/A** and personally searched vide memo **Ex.PW9/B** bearing her signature at point A. Witness has further deposed that the accused Bhagwati Devi was taken to BJRM Hospital for her medical examination and she was thereafter produced before the court.

In her cross examination, witness states that they left the police station at about 9.30 or 10.00AM. She does not remember whether the investigating officer got the DD entry regarding their departure from the police station. She further stated that they reached the spot in a TSR and is unable to tell the number of the said TSR. Witness has deposed that when they reached the aforesaid place at about 10.45AM, they were in civil clothes. She has deposed that one male was also available in the family of Smt. Bhagwati Devi but she is unable to tell the number of rooms in the house of Bhagwati Devi or how many tenants were present in those rooms. According to

the witness, the public persons of the nearby houses had also gathered there when they reached there but she is unable to tell the name of the male members available in the house of Bhagwati Devi. Witness is unable to tell if investigating officer made enquiries from that male member and has stated that about 7-8 public persons gathered there or if investigating officer made efforts to join them in the investigation of this case. She also does not know if the investigating officer had recorded their names or addresses or had given any notice to those public persons who refused to join them. According to the witness they remained there for about 10-15 minutes she is unable to tell if any writing work was done there or not by the investigating officer. Witness has however admitted that she had signed the arrest memo there but has denied that she did not go to the spot or had signed the documents while sitting in the police station.

PW10 Lady Ct. Sunita has in her examination in chief, witness deposed that on 13.06.2009 she was posted at police station Swaroop Nagar and on that day she along with investigating officer was busy in the investigation of this case. Witness deposed that one prosecutrix was taken by her to BJRM Hospital for her medical examination. Witness confirmed that she received the exhibits from the doctor duly sealed with the seal and she handed over the same to SI Durga Kapri who seized them vide seizure memo **Ex.PW10/A** bearing her signature at point A. She has further deposed that she alongwith prosecutrix came to the police station and the investigating officer of this case prepared a rukka which was produced before the

Duty Officer. Witness has further deposed that she along with investigating officer and prosecutrix reached at the spot and the investigating officer prepared the site plan. She deposed that at the same time Ct. Manoj also came to the spot with copy of FIR and original rukka which was handed over to the investigating officer after which they came back to the police station.

With the permission of the court, Ld. APP put leading question to the witness on which the witness admitted that at about 7.00 PM step father of prosecutrix had come to the spot whom she (prosecutrix) identified as the accused and on this Ct. Manoj apprehended him and his name came to know as Dinesh Yadav. Witness has further admitted that Dinesh Yadav was interrogated and he had given his disclosure statement admitting his guilt which disclosure statement of Dinesh Yadav is **Ex.PW10/A** bearing her signatures at point A. Witness has further admitted that the accused Dinesh Yadav was arrested in this case vide memo **Ex.PW6/D** after which investigating officer directed her to take prosecutrix to the police station and investigating officer along with Ct. Manoj and accused the Dinesh Yadav went to BJRM Hospital. She has correctly identified the accused Dinesh Yadav.

In her cross examination, witness has deposed that they left the police station at about 4.45PM and SI Durga Kapri was the investigating officer. She has stated that they reached at the spot at about 4.45PM and it took about 30 minutes to reach the place of incident while going on motor cycle. She has admitted that the place of incident is H. No. 428-429 Gujjar Chowk, Bhalsawa Dairy, Delhi

and that investigating officer SI Durga Kapri was with her and they went to the spot in a government gypsy. Witness has further deposed that about 10-15 public persons had gathered at the spot but is unable to tell whether the investigating officer had asked any public person to join the investigation or whether the investigating officer wrote the name and address of the above said public persons. According to the witness, they remained at the spot for about two hours but she does not remember the time of leaving of the spot but states that thereafter from the spot they went to the police station. She has admitted that the entire writing work was done in the police station after returned there and has denied the suggestion that she did not go to the spot or that no proceedings took place in her presence.

PW11 HC Manoj Kumar has in his examination in chief, deposed that on 13.06.2009 he was posted at police station Swaroop Nagar and on that day Duty Officer handed over the copy of FIR and original rukka to him. He further deposed that he took the same to A-428/429, Gujjar Chowk, Bhalsawa Dairy and the same were handed over to SI Durga Kapri where the prosecutrix was also present. He has deposed that the prosecutrix had identified a male person present there as the accused and it was learnt that he was her stepfather and on interrogation, his name was revealed as Dinesh Yadav. Witness deposed that Dinesh Yadav was arrested in this case vide memo **Ex.PW6/D** bearing his signatures at point B and was also personally searched vide memo **Ex.PW11/A** bearing his signatures at point A. The witness has further deposed that Dinesh Yadav was interrogated and his disclosure statement was recorded vide

Ex.PW10/A which bears his signature at point B. Witness further deposed that he along with the investigating officer took the accused Dinesh Yadav to BJRM Hospital for his medical examination and after the examination he took the exhibits of the accused from the doctor duly sealed with the seal of the hospital and the same were handed over to investigating officer who seized the same vide seizure memo **Ex.PW11/B** bearing his signatures at point A and thereafter accused Dinesh Yadav was sent to lock up. Witness deposed that the case property was deposited by the investigating officer in the Malkhana and his statement was recorded.

In his cross examination, witness states that he left the police station at about 6.00PM and reached at the spot on foot and it took about 20-25 minutes in reaching there. Witness further deposed that investigating officer SI Durga Kapri was already present there and Lady Constable Sunita along with the prosecutrix were also present there. According to the witness, about 5 to 7 public persons had also gathered there and investigating officer made efforts to join them in the investigation but none agreed and left the spot without disclosing their names and addresses. Witness has further deposed that investigating officer could not give them any notice as they left the spot. He has stated that the arrest memo, personal search memo and disclosure statement were prepared in his presence and he signed the same. Witness deposed that they stayed at the spot for about 1 or 1 ¼ hour and left the spot at 8.00PM. Witness further deposed that he left the spot with investigating officer SI Durga Kapri for BJRM Hospital. Witness is unable to tell the exact time of coming back to

the police station from the hospital but has denied the suggestion neither he went to the spot nor any document was prepared in his presence or that all the writing work was done while sitting in the police station.

PW12 W/SI Susheela Rana has in her examination in chief, deposed that on 28.09.2009 she was posted at RCI Cell, Shalimar Bagh, Delhi and further investigation of this case was entrusted to her by the SHO. She has deposed that she received the case file from MHC(R) and after going through the same she made efforts to trace Bhagwati Devi who could not be traced till 06.10.2009. Witness deposed that thereafter she proceeded on leave on 06.10.2009 she therefore handed over the case file to the MHC(R).

In her cross examination, this witness states that the file remained with me only for four days and she could not do much investigation except to search for Bhagwati. Witness has denied the suggestion that she did not make any efforts.

PW14 SI Durga Kapri has in her examination of chief, witness deposed that on 13.06.2009 he was posted at police station Swaroop Nagar and on that day prosecutrix prosecutrix came to the police station who told him that her step father, Dinesh Yadav had tried to commit rape upon her in the intervening night of 12/13.06.2009 and earlier also on three to four occasions her step father had committed rape upon her. She has deposed that she immediately informed NGOs regarding this and recorded statement of prosecutrix **Ex.PW1/C** bearing her signature at point A and his

endorsement which is **Ex.PW14/A** bearing his signature at point A. She has further deposed that he along with L/Ct. Sunita and prosecutrix took prosecutrix to BJRM hospital and got conducted medical examination of prosecutrix and after her medical examination doctor handed over MLC, **EX PW 4/B** one sealed pullanda and sample seal to L/Ct. Sunita which she handed over to her (witness) and she seized the same vide seizure memo **Ex.PW10/A** bearing her signatures at point B. Thereafter, she along with prosecutrix and Lady Ct. Sunita reached the police station and she prepared the rukka and handed over the same to the duty officer for registration of the case and also deposited the pullanda and sample seal in the malkhana and thereafter left the police station along with the victim / prosecutrix and lady Ct. Sunita and reached the spot of incident i.e. 428/429, Gujar Chowk, Bhalswa Dairy. Thereafter on the pointing out of the victim / prosecutrix, she prepared the site plan which is **Ex.PW6/A** bearing her signature at point A. According to the witness, she did not find anybody present in the house of prosecutrix and the prosecutrix had told her that her mother had already left the house and even her younger brother and sisters were also not present and the neighbours informed them that the uncle/ chacha of the children had taken them away. Witness further deposed that thereafter she made inquires from the neighbour and no person was ready to give their statement in writing. In the meanwhile Ct. Manoj came to the spot along with the copy of FIR and original rukka which he handed over to her and while they were still standing outside the house in the gali, prosecutrix pointed out

towards one person coming towards the house from the main gali as her step father who had tried to commit rape upon her the previous night. Witness has deposed that the said person was immediately apprehended with the help of Ct. Manoj and she conducted the preliminary interrogation of the accused wherein the accused disclosed that he was under the influence of alcohol the previous night during which he tried to commit the incident with the prosecutrix which disclosure is **Ex.PW10/A**. Witness has further deposed that thereafter the accused whose name they came to know as Dinesh Yadav (accused correctly identified by the witness in the court) was arrested vide memo **EX PW 6/D** bearing her signature at point C and she directed Ct. Manoj to carry out the personal search of the accused. Thereafter, the personal search memo **ExPW11/A** bearing her signature at point B was prepared. According to the witness, she thereafter sent prosecutrix to the police station along with L/Ct. Sunita and went to the BJRM hospital along with accused and Ct. Manoj where medical examination of accused was conducted. After the medical examination of accused doctor handed over MLC of accused, blood sample and sample seal to Ct. Manoj which he further handed over to her which were taken into possession vide memo **Ex.PW11/B** bearing her signature at point B. Witness has deposed that thereafter accused was kept in the lock up of police station Jahangirpuri and next day sent to judicial custody whereas the prosecutrix was sent to Nari Niketan and the case property and exhibits were deposited in the malkhana. Witness further deposed that she recorded the statement of witnesses.

Witness has further deposed that on 14.06.2009 she moved an application before Ld. MM which is **Ex.PW6/B** bearing her signature at point A for recording the statement of prosecutrix U/S 164 Cr. P.C. and accordingly the statement of prosecutrix was recorded U/S 164 Cr. P.C. She has identified her application as **Ex.PW14/B** bearing her signature at point A which application was for obtaining the copy of statement recorded by Ld. MM and the copy was given to her. According to the witness, since there was no guardian of the prosecutrix available, she was therefore produced before the CWC from where she was sent to Nirmal Chayya, Children's home on the directions of CWC. Witness has deposed that during the course of investigations the exhibits collected from the hospital were sent to FSL, Rohini. According to the witness, she tried to trace out the accused Bhagwati Devi but she remained absconding and could not be traced even after NBW's were issued against her and she thereafter prepared the charge sheet against the accused Dinesh Yadav and filed the same in the court. Witness further deposed that the FSL result was also collected later which is **EX PW 8/A** .

In her cross examination, the witness has deposed that one boy namely Harish had produced the prosecutrix before her and thereafter left after keeping the prosecutrix at the police station and that no lady met her at that time. She has deposed that she recorded the statement of prosecutrix in the police station itself. Witness deposed that she was in civil clothes when she came to the spot and not many people gathered at the spot when they reached there along

with prosecutrix but only some of the occupants came out. According to the witness, the neighbours of prosecutrix were mostly daily wagers and had refused to give their names when she tried to join them in the investigations and also interrogated them. She has stated that she did not give them any notice for not joining the proceedings. She has also stated that Harish did not come to the spot with her from the police station since he had left after leaving prosecutrix in the police station and she recorded the statement of Harish next day when he came to the police station to find out about prosecutrix. Witness has stated that she tried to find out the location of the house of Harish and found that there was one main gali and on one side the house of prosecutrix was situated whereas on the other side of the said gali there was another gali where the house of Harish is situated. Witness has stated that she stayed at the spot for about 2-2 ½ hours and admits that accused Dinesh Yadav did not try to run away on seeing her. Witness denied the suggestion that she did not try to locate the witness to the incident but states that residents had refused to co-operate. Witness has admitted that she did not prepare the rukka at the spot and it was prepared by her at the police station. Witness has further admitted that she did not seize the chunni of the prosecutrix which the prosecutrix had alleged was pulled by the accused Dinesh Yadav. According to the witness, she had interrogated Harish as to how he had reached the spot on which Harish told her that it was hot and he had therefore come out to take a stroll and gone to the spot when he saw the crowd. Witness has admitted that she has not shown the house of Harish in the site plan

and states that his house is situated at the distance of about 150 yards. Witness has also stated that she had checked the school record of prosecutrix regarding her date of birth and obtained her school certificate and also made inquires regarding the relation between Harish and prosecutrix, when she was told by prosecutrix, which was also duly corroborated by father of Harish that Harish is muhbola bhai (a brother) of the prosecutrix. Witness has denied the suggestion that there were some other relations between prosecutrix and Harish which she did not investigate or that all proceedings were conducted while sitting in the police station.

PW15 SI Daya Nand has deposed that on 15.1.2010 he was posted as ASI at PS Swaroop Nagar and on that day the investigations of this case FIR No. 138/09 were handed over to him by the MHC(R). According to the witness, when he perused the case file and came to know that main challan against the accused Dinesh Yadav had already filed in the court and NBWs against the accused Bhagwati Devi were issued by the court. Witness has further deposed that the process under Section 82/83 Cr.P.C. could be completed, he received a secret information that the accused Bhagwati Devi had come back from Bihar and was available at House No. WZ-315, Shakur Pur. Witness has deposed that on receipt of this information, on 28.1.2010 he along with lady Ct. Poonam reached at the aforesaid house where accused Bhagwati Devi was found present. Witness has deposed that the accused Bhagwati was apprehended with the help of Lady Ct. Poonam and was interrogated by him after which the accused Bhagwati Devi was arrested vide memo **Ex.PW9/A** bearing

his signatures at point B and she was personally searched was conducted by Lady Ct. Poonam vide memo **ExPW9/B** bearing his signatures at point B. Witness correctly identified the accused Bhagwati Devi and has deposed that after arrest the accused Bhagwati was taken to Babu Jagjeevan Ram Memorial hospital where she was got medically examined. Witness has further deposed that he recorded the statement of Ct. Poonam under Section 161 **Cr.P.C.** and after completing the investigations he prepared the supplementary challan and filed the same in the court.

In his cross examination, witness denied the suggestion that accused Bhagwati was available in Delhi and had never absconded or that he never conducted any further investigations and had filed the supplementary charge sheet by completing the documentation while sitting in the police station.

Statement of Accused and Defence Evidence:

After completion of prosecution evidence the statements of both the accused were recorded under Section 313 Code of Criminal Procedure wherein all incriminating evidence was put to them which they have denied.

The accused **Dinesh Yadav** has stated that it is a false case and he has been falsely implicated. According to him, the Prosecutrix 'A' was in love with one Harish and willing to marry him to which he (accused) objected due to which reason she (prosecutrix) had implicated him in connivance with Harish. He has stated that on the day of incident when he returned, that Harish was present at his (accused's) house with the prosecutrix 'A'. He has not examined any

witness in his defence.

The accused **Bhagwati Devi** has admitted that when the prosecutrix 'A' told her about the incident, she objected on which the accused Dinesh Yadav gave beatings to her and on one occasion he had broken her hand after which she left the house. However, she has stated that she is innocent as no such incident had taken place. She has stated that she had married the accused Dinesh Yadav. According to accused Bhagwati, her daughter (prosecutrix) had never told her about any incident which had taken place. She has further stated that she was unwell and had gone to her brother's house on the date incident and she has been falsely implicated in this case. Accused Bhagwati had also not chosen to examine any witness in defence.

FINDINGS:

I have heard the arguments advanced before me by the Ld. Addl. PP for the State and the Ld. defence counsel. I have also perused the testimonies of various witnesses and considered the written synopsis/ memorandum of arguments filed on behalf of the accused persons.

Relationship between the Prosecutrix and the Accused:

It is not disputed that the prosecutrix is the step daughter of accused Dinesh Yadav. The co-accused Bhagwati had married accused Dinesh Yadav after the demise of her first husband. Initially the prosecutrix was being taken care of her maternal grand parents, but she later joined her natural mother (i.e. accused Bhagwati) at the

house of the accused Dinesh Yadav, at the age of about 7 to 8 years. This being so, I hereby hold it stands established that the accused Dinesh Yadav is the step father of the prosecutrix.

Identity of the Accused:

In so far as the identity of the accused Dinesh Yadav and Bhagwati Devi is concerned, the same is not disputed. The accused Bhagwati being the natural mother and accused Dinesh being step father of the victim / prosecutrix. The accused Dinesh has been specifically named in the FIR and also in the statements made by the prosecutrix under Section 164 Cr.PC. He has been duly identified in the court by the prosecutrix and also by the witness Harish and the various police witnesses who had arrested him. I hereby hold that the identity of both the accused Dinesh and Bhagwati stand established.

Age of the prosecutrix:

At the time of her deposition in the court, the prosecutrix has given her age 16 years. Her date of birth as per school record is 2.2.1994. As per the allegations she was being subjected to sexual abuse by her stepfather Dinesh Yadav over a period of four years prior to the reporting of the matter to the police and had been raped on three to four occasions. It is evident that the prosecutrix was a minor (even below the age of 16 years) at the time when she was being subjected to sexual intercourse by the accused Dinesh Yadav. At the time of her deposition in the court, the prosecutrix has come from Children Home where she was residing after the registration of the present case.

Allegations against the accused:

The case of the prosecution is that when the prosecutrix was 10-12 years of age, her stepfather i.e. the accused Dinesh had forcibly started making physical relations with her. The prosecutrix has specifically deposed that her stepfather Dinesh Yadav made physical relations with her on 2-3 occasions before the registration of the present case and when she informed about this act to her mother i.e. accused Bhagwati and Bhagwati confronted Dinesh Yadav with it, he beat up Bhagwati and threatened to kill her and also her other brothers and sisters. According to the prosecutrix on one occasion when Bhagwati objected to the conduct of Dinesh Yadav, he gave her beatings and even broke her hand on which being fed up Bhagwati went away to her brother's/ mama's house leaving behind all her children including the prosecutrix. In this regard, I may mention that in her initial statement to the police, the prosecutrix had told the investigating officer that the accused Dinesh Yadav had been physically abusing her for the last four years and when she told her mother Bhagwati Devi about the same, Bhagwati asked her to suppress the incident and rather advised her (prosecutrix) not to tell anybody about the incident. She had also told the police that her parents (both the accused before the court) had threatened her not to tell about this incident to anybody and also threatened to kill her in case she did so. According to her, one week prior to her complaint, her mother had gone away without telling anything to her and her other brothers and sisters and even her stepfather Dinesh Yadav had also gone to his village. After about one week suddenly on

12/13.6.2009 he came back at about 12 O'clock at night on which she (prosecutrix) prepared and served food to him. Thereafter when she was going to sleep, the accused Dinesh Yadav pulled her Chunni and caught hold of her hands and attempted to commit rape with her on which she raised an alarm and on hearing the noise the neighbours gathered at the spot and the accused Dinesh Yadav ran away from the spot and the neighbours advised the prosecutrix to make a complaint to the police. The prosecutrix has stated that at night she got very scared, when one neighbour namely Haish whom she treats as a brother advised her to immediately inform the police when she went to the police and registered the case against her stepfather i.e. accused Dinesh Yadav. In her statement under Section 164 Cr.PC Ex.PW6/C, the prosecutrix has corroborated what she had earlier told the investigating officer. The relevant portion of her statement under Section 164 Cr.PC is as under:

“..... dinank 13/6/09 ko mere sautele baap Dinesh Yadav raat ko 12 baje ghar par aye, maine apne papa ko khana bana kar diya, *uske baad mere papa mere sath jabardasti karne lage mere mana karne par bhi mere papa ne mere sath peri marji ke khilaf galat kaam kiya. Mere papa mere sath yeh galat kaam pichhle teen saal se kar rahe the. Mere mana karne par bhi nahi maane.* Maine apni mammi ko bhi bataya lekin mere paapa nahi mane aur lagatar phichhle teen saal se meri ichha ke virudh mere sath galat kaam kar

rahe hain. Mere paapa ko sakht saja milni chahiye taki wah meri aur bahno ke sath galat kaam na kar sake”

Similarly, in her testimony before the court, the prosecutrix has corroborated her above version, the relevant extract of which is as under:

“..... Ever-since I was 10-12 years old my step father Dinesh Yadav had been forcibly trying to make physical relations with me despite my opposition and without my consent. He made physical relations with me on two to three occasions before the registration of the present case. I informed my mother Bhagwati Devi about what my father was doing with me and when my mother Bhagwati Devi asked Dinesh Yadav as to why he was doing to me, my step father started beating my mother and threatened her to kill her and also threatened to kill my other brothers and sisters. On one occasion Dinesh Yadav even broke the hand of my mother when she objected but my father did not desist from his acts. My father committed rape upon me in the month of June 2009 and I told my mother about the same and my mother again objected to my father but my father Dinesh Yadav gave her beatings and

threatened her on which my mother went somewhere and later on we came to know that she had gone to my Mama's house in the village. My father Dinesh Yadav also went to his village. After one week when my father Dinesh Yadav returned back at about 12:00/ 12:30 midnight on the night of 12/13.6.2009, I prepared food for him. After giving him food when I was going to sleep, when my father Dinesh Yadav pulled my Chunni and switched off the lights and thereafter caught hold of my hand and again started doing 'Zabardasti with me on which I raised an alarm. My brothers and sisters who were sleeping in the room, woke up on hearing my voice and my neighbours also woke up and I told them what my father was doing. One of my neighbours whom I called Harish Bhai also came to the spot and I narrated what had happened on which I was advised by everybody to go to police station. In the morning one aunt from neighbourhood namely Sangeeta aunt and Harish Bhai took me to police station where I got the present case registered. ..."

The prosecutrix has been cross examined at length and nothing much has come out of the same. A specific suggestion had been put to her by Ld. defence counsel that she was having physical

relations with Harish Chander (PW13) and when on one occasion the accused Dinesh Yadav saw her in objectionable position with Harish Chander and objected to the same, after which she has falsely implicated him in the present case. I have considered the defence raised by the accused in the light of the statement made by the prosecutrix and the circumstantial evidence on record. Clearly the ground so raised is a clever after thought by the accused. Had it been that the accused Dinesh Yadav would have caught the prosecutrix with Harish Chander, then as a father it is he (accused) who would have taken the prosecutrix and Harish Chander to task rather than the prosecutrix raising the alarm. He would also not have run away from the spot. Further, had Harish Chander been guilty he would rather have suppressed the incident, than accompanied the prosecutrix 'A' at the Police Station in the morning when she made her complaint. It is writ large that the insinuations made by the accused upon the character of the prosecutrix vis-a-vis her relations with the witness Harish Chander, was only a mischievous attempt of the accused as a planned strategy to pressurize and deter the witness from speaking the truth in the court and to a large extent he was successful in the same when PW13 Harish Chander in his initial deposition before the court did not give the complete details and tried to suppress the truth. The statement of the co-accused Bhagwati shows that she does not say anything about the relationship between the prosecutrix 'A' and Harish Chander (PW13) and had this been so, she would have certainly mentioned about it which she did not do.

It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the court may look for corroboration from independent sources or from the circumstances of the case before recording an order of conviction. In the instant case the allegations were, that the accused who is the stepfather of the prosecutrix had molested the prosecutrix in an attempt to rape her and even on three to four occasions prior to the reporting of the incident had committed rape upon her. I may observe that child abuse and incest are dark realities of our social system where the only witness is the victim. In the present case, the evidence of the prosecutrix has been found to be worthy of credit and implicitly reliable. The testimony of a victim of sexual assault is vital and has to be accepted unless there are compelling reasons which necessitate looking for corroboration of her statement. 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 the given circumstances. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix cannot be a ground for throwing out an otherwise reliable case.

In a normal course a victim of sexual assault does not like to disclose such an offence even before her family members much

less before the public or before the police and that too when the molester is none else but the father. An Indian woman has a tendency to conceal such an offence because it involves her prestige and also the prestige of her family and it is only in very rare cases that the victim girl has the courage to go before the Police Station and lodge a case, as has happened in the present instance. The suggestion given on behalf of the defence that the victim has falsely implicated the accused because she was caught red handed with Harish Chander does not appeal to reasoning. It is apparent from the evidence on record that the prosecutrix 'A' had been subjected to a long period of sexual abuse by her stepfather and when she complained to her mother she was asked to hush up the incident and not to tell anybody. It is also evident from her statement that she had been threatened to keep quite or else she would be killed. In fact it was only when Bhagwati, the mother of the prosecutrix 'A' protested to the accused and she was badly battered and injured and being fed up she ultimately abandoned the accused and the children and went to her brother's house, that when the prosecutrix was again molested by her stepfather (accused Dinesh Yadav) in the absence of her mother that she decided that she will have it no more. She raised an alarm on which the neighbours gathered and the accused ran away from the spot and on their advice she reported the matter to the police immediately in the morning. It stands established from the testimony of PW14 (SI Durga Kapri) that it was Harish Chander (PW13) who left her at the Police Station and the prosecutrix reported the matter to the Duty Officer. I may add that no girl of self respect and dignity

who is conscious of her chastity having expectation of married life and livelihood would falsely accuse any person of rape, much less her father thereby sacrificing her chastity and expose her entire family to shame and at the risk of condemnation and ostracization by the society. All through the investigations Bhagwati, the mother of the prosecutrix, stood by her husband the accused rather than the prosecutrix and her stand was that the prosecutrix had never disclosed to her about the conduct of the accused but when the incriminating material was put to her during her examination under Section 313 Code of Criminal Procedure, she admitted that the prosecutrix had complained to her about the conduct of the accused Dinesh Yadav on which she had protested on many occasions but was threatened and beaten so much so that on one occasion her arm was broken as a result of which being fed up she left the accused and the children and went away to her brother's house. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to. [Ref.: **State of Himachal Pradesh Vs. Asha Ram** reported in **2006 Cri.L.J. 139 (143) (SC)**].

Corroboration of the statement of the prosecutrix from the statement of Harish Chand:

Harish Chander (PW13) is the neighbour of the complainant/ prosecutrix who has deposed before the court that the

prosecutrix is like a sister to him and used to tie Rakhi to him. According to him, the prosecutrix was residing with her parents, brother and sister in the same tenanted house in which he (PW13) was also living at Bhalaswa Dairy. Initially in his testimony before the court Harish Chander (PW13) did not disclose anything about the incident, rather he tried to suppress the various details. However, when he was cross-examined by the Addl. Public Prosecutor with the permission of the court, that he came out with the complete details.

I have gone through his testimony wherein he has proved **firstly** that on the intervening night of 12/13.6.2009 there was some incident in the house of the prosecutrix 'A' and a crowd had gathered outside her house. **Secondly** that when he went to the spot he was told by public persons that the accused Dinesh Yadav had come out from the house and run away. **Thirdly** that the prosecutrix 'A' had told him that her stepfather had come home in the night and tried to rape her and when he pulled her chunni she raised an alarm on which public persons had gathered and the accused Dinesh Yadav had run away. **Fourthly** that when he tried to console the prosecutrix 'A' she told him that even 10 – 15 days back the accused Dinesh Yadav had committed rape upon her on which she told her mother Bhagwati about this incident but she was told by Bhagwati to keep quite and when Bhagwati tried to oppose this act of the accused, he threatened her and Bhagwati being fed up went away leaving her and the other children behind. **Fifthly** that at that time there was no elder person present in the house of the prosecutrix and he consoled the prosecutrix. **Sixthly** that the accused Dinesh Yadav had gone away

somewhere and it was on the date of incident i.e. intervening night of 12/13.6.2009 that he had returned during the night and the prosecutrix had told him and he had run away from the spot. **Lastly** that in the morning he had taken the prosecutrix to the Police Station and left her there.

I may observe that it is evident from the record that the witness Harish Chander (PW13) is residing in the same area and his house is on the same road as that of the prosecutrix 'A' which is divided by a gali (another road). Though it is not possible that Harish Chander would have heard the alarm raised by the prosecutrix but he has explained that being summer season he was taking a stroll on the road as it was hot inside, when he saw the crowd outside the house of the prosecutrix 'A' which house is visible from his house due to which reason he went there being concerned. I find no reason to disbelieve his version. Even the investigating officer SI Durga Kapri has in her testimony has testified that the witness Harish Chander used to treat the prosecutrix 'A' as a sister and his house was in the same vicinity. It is only natural that in case of any incident during the night hours when a crowd had gathered outside the house of the prosecutrix that Harish Chander could have known of the same and there is no reason to disbelieve his version.

It is argued by the Ld. Defence Counsel that the entire testimony of this witness Harish Chander is required to be discarded as it is based upon hear-say more so when the witness himself has not completely supported the prosecution case. I have considered the submissions made. I may observe that the version given by the

witness Harish Chander is on the basis of what he had himself observed at the spot and what was directly told to him by the prosecutrix 'A'. Even otherwise the offence of sexual abuse having been committed in secrecy there would be no direct eye witness to the same. Being a resident of the same area and treating the prosecutrix 'A' like a sister he had left her at the Police Station in the morning, a fact which is evident from the testimony of SI Durga Kapri (PW14) and apparently it is for this reason that the accused has pointed a finger at this witness Harish Chander (PW13) accusing him of having relations with the prosecutrix to which he objected which fact neither stands established nor is borne out from the record and I find no reason to discard the statement of Harish Chander (PW13). Even otherwise, it is a settled law that this court can even look into the statement of a hostile witness to the extent of corroboration. In the present case Harish Chander (PW13) has not turned hostile. He has rather corroborated the version of the prosecutrix that he was present at the spot after the prosecutrix raised an alarm and was told about the conduct of the accused on which he advised her to report the matter to the police and therefore, took her and left her at the Police Station in the morning.

Corroboration of the version given by the prosecutrix from the statement of accused Bhagwati made by her under Section 313 Cr.P.C.

The accused Bhagwati, who has begotten five children from the accused, in her statement under Section 313 Cr.PC has initially stated that she did not know about any such incident as she

had never seen the accused marking physical relations with the prosecutrix 'A' but when she was confronted with the statement of the prosecutrix that the accused had given her a beating and also threatened to kill her and all the children, when she protested to the accused which regard to his behaviour towards the prosecutrix, that she admitted to the court that the prosecutrix 'A' had told her about the incident and when she objected the accused Dinesh Yadav started beating her and broke her arm. She further admitted that being fed up she went to her brother's house but again when asked if she wanted to say anything else, she again stated that the prosecutrix had never told her about any incident and she was unwell due to which reason she went to her brother's house. The questions put to her and the answers given by Bhagwati are being reproduced as under:

Q6 : *It is in evidence against you that PW6 Km. Anita has stated in her statement that she informed her mother (i.e you Bhagwati Devi) about the incident when you asked your co-accused Dinesh Yadav as to why he was doing so with her and he started beating her mother (you Bhagwati) and threatened you to kill you and also threatened to kill her brothers and sisters. What you have to say about it?*

Ans: *When Anita told me about the incident I objected. On which accused Dinesh Yadav started beating me and one occasion he had broken my hand. On this I left the house.*

Q7 : *It is in evidence against you that PW 6 Km. Anita has stated in her statement that on one occasion your co-accused Dinesh Yadav even broke the hand of her mother (you Bhagwati) when you objected but your co-accused Dinesh Yadav did not resist from his act and committed rape upon her in the month of June, 2009 and she told her mother (you Bhagwati) about the same and you again objected but your co-accused Dinesh Yadav gave you beatings and threatened you on which you Bhagwati went some where and later on she came to know that Bhagwati had gone to her mama's house in the village. What you have to say about it?*

Ans: *It is correct.*

Further, the reply to the Question No. 15 is also being reproduced as under:

Q15 : *It is in evidence against you that PW13 Harish Chander has stated in his statement that there was no elder person present in the house of Anita at that time and your co-accused Dinesh Yadav tried to console Anita and it was during this Anita had told him that even 10-15 days back your co-accused Dinesh Yadav had committed rape upon her and she told you Smt. Bhagwati*

about this, but you kept quite. What you have to say about it?

Ans: It is incorrect and I had objected the act of Dinesh Yadav. On this he has started beating me and also broken my hand and I left the house.

It is evident from the above statement of Bhagwati that she is in a catch-22 situation. On the one hand is her daughter from the first marriage who has been sexually abused by her second husband and on the other hand is her second husband, the molester, from whom she has begotten five children i.e. four daughters and one son all of whom are minors and totally dependent upon her and the accused. Again on the one hand she is trying to save her marriage with the accused whereas on the other hand she appears to be in a fix in so far as the prosecutrix 'A' is concerned. Her statement made to the court under **Section 313** Code of Criminal Procedure is a reflection of the aforesaid situation. There was no reason for Bhagwati to have abandoned her six children all of whom are minors and to have gone away without information leaving them all to find for themselves. It is writ large that it was only because of the conduct of the accused who had beaten her up whenever she protested to him in respect of his conduct qua the prosecutrix. The version given by the prosecutrix 'A' also find support from the statement of Bhagwati.

Non joining of public witnesses:

The Ld. Defence Counsel has vehemently argued that despite there being sufficient opportunity the Investigating Officer has not joined any independent public witness to corroborate the version given by the prosecutrix 'A' and hence, under these circumstances due benefit of the same is required to be given to the accused.

I have considered the submissions made. At the very outset, I may observe that there is a general tendency of people particularly if they are a migrant population living on rent to keep out of the controversies involving police and court particularly when the allegations of sexual abuse have been made by the daughter against the stepfather. Rarely do we find a public spirited persons who would come to the rescue of a helpless girl. Understandably, one of the reason being that a person who comes to the rescue of the woman is often targeted as has happened in the present case where the accused pointed fingers at Harish Chander (PW13) vis-a-vis his relations with the prosecutrix 'A'.

I may further observe that the evidence on record reflects that the neighbours of the prosecutrix 'A' are mostly migrant labours who are residing in the same complex and frequently shift from one place to another and therefore, under these circumstances it would be difficult to find a witness who would be in a position to depose fearlessly in the court. It is also evident from the testimony of the Investigating Officer SI Durga Kapri (PW14) and the testimony of HC Manoj (PW11) that they had made attempts to join public

witnesses but the persons who were present at the spot refused. This being the background, I find that a valid explanation is forthcoming and there is no reason to reject the testimony of the prosecutrix and other witnesses on this count.

Medical / Forensic Evidence:

Since the incident is reported to be over a period of time and actual incident of rape has not happened on the date of incident, therefore no external injury has been found on the prosecutrix as evident from the MLC **Ex.PW4/B** but she had specifically told to the doctor that she had been sexually assaulted by her father for four years and her parents had threatened her with dire consequences and therefore she did not reported the incident. It is evident from the MLC of the prosecutrix that the doctor on duty had carried out gynecological examination and as per the report PV and hymen was torn. Therefore, once the prosecutrix states that it was the accused, her stepfather who had been raping her, I hereby hold that the oral testimony of the prosecutrix finds due corroboration from the medical evidence on record.

FINAL CONCLUSION

In the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622*, the Apex Court has laid down the tests which are pre-requisites before conviction should be recorded, which are as under:

- 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.*

The circumstances concerned 'must or should' and not 'may be' established;

- 2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- 3. The circumstances should be of conclusive nature and tendency;*
- 4. They should exclude every possible hypothesis except the one to be proved; and*
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

Applying the above settled principles of law to the facts of present case, it is evident that the identity of the accused has been established. It is further stands established that at the time of the incident, the prosecutrix was a minor (below the age of 16 years). It is further proved that the prosecutrix 'A' is the step daughter of accused Dinesh Yadav and the co-accused Bhagwati is her natural mother. It has been proved that the prosecutrix was staying with her maternal grand parents and after the death of her natural father, her

mother Bhagwati Devi (i.e. co-accused) remarried and after seven to eight years of age she joined her mother at her maternal house (house of accused Dinesh Yadav). It has been further proved that the accused Dinesh Yadav had been subjecting the prosecutrix 'A' (his step daughter) to sexual assault for a period of four years and even committed sexual intercourse upon her on three to four occasions. It stands established that the prosecutrix 'A' complained to Bhagwati about the conduct of the accused and was threatened to keep quiet and not to disclose the incident to anybody. Later when Bhagwati protested to the accused Dinesh Yadav he used to beat her and on one occasion when she protested he even broke her arm. It further stands established that even prior to the reporting of the incident the accused had committed rape upon the prosecutrix 'A' and when she informed her mother Bhagwati and Bhagwati protested, she was beaten by the accused as a result of which Bhagwati being fed up left the house of the accused leaving all her children behind. It further stands established that after Bhagwati left even the accused Dinesh Yadav left the house and suddenly after one week he returned on the intervening night of 12/13.6.2009 at midnight and the prosecutrix prepared and served food to him. It further stand established that thereafter when the prosecutrix was going to sleep, he pulled her chunni and caught hold of her hands and tried to commit rape with her on which she raised an alarm and public persons including PW13 Harish Chander collected at the spot. It is further proved that the prosecutrix 'A' has narrated the entire incident to PW13 Harish Chander and other ladies from the neighbourhood who advised her to

inform the police. It further stands established that in the morning Harish Chander left the prosecutrix 'A' at the Police Station where the present was recorded on the basis of her statement.

The prosecution has duly proved the identity of the accused, the manner in which the offence has been committed, place of commission of the offence, the investigation including the documents prepared, MLC of the prosecutrix etc. There is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative. The evidence of the prosecution witnesses is natural and trustworthy and corroborated by medical evidence and the witness of the prosecution have been able to built up a continuous link.

This being the background, I hereby hold that in so far as the accused Bhagwati Devi is concerned, she herself is a victim of circumstances. She had married the accused Dinesh Yadav after the death of her first husband and is having five children from this wedlock and when the prosecutrix 'A' (her daughter from first marriage) came to stay with her, the accused Dinesh Yadav started sexually abusing her and when she came to know about this and objected to the same, he battered her and threatened her to kill her and fearing of social stigma both the prosecutrix and her mother i.e. co-accused Bhagwati did not inform anybody about the incident, rather Bhagwati ill advised the prosecutrix to remain silent and did

not tell anybody about the same. It has been further proved that later the accused Dinesh Yadav repeated his conduct and when Bhagwati Devi objected to the same, he broke her arm and being fed up she left the house of the accused. Under these circumstances the accused Bhagwati herself being a victim of domestic abuse cannot be held liable for abetment. In view of my above discussion, the accused Bhagwati Devi is hereby acquitted of the charges under **Section 376** read with **Section 109** and **Section 506/34 Indian Penal Code**, but I hereby hold the accused Dinesh Yadav guilty of the offence under **Section 376 (2) (f) Indian Penal Code** and convict him accordingly.

Before parting, I may specifically observe and compliment the prosecutrix who has shown the great strength of character and courage by standing up against the injustice being meted out to her by her stepfather. It is evident that when her mother abandoned her and other siblings being fed up of the conduct and the behaviour of the accused Dinesh Yadav, she (prosecutrix) stood up and opposed his advances and she reported the matter to the police and took it to its logical conclusion.

Case be listed for arguments on sentence qua the accused Dinesh Yadav on 25.4.2011.

Announced in the open court
Dated: 21.4.2011

(Dr. KAMINI LAU)
ASJ (NW)-II: ROHINI

**IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS
JUDGE-II (NORTH-WEST): ROHINI COURTS: DELHI.**

Sessions Case No. 1159/2009

Unique Case ID: 02404R0285032009

State Vs. Dinesh Yadav
S/o Ram Kishore Yadav,
R/o A-428/429, Gujjar Chowk,
Bhalaswa Dairy, Delhi

FIR No. : 138/2009
Under Section : 376/506/109/34 Indian penal Code.
Police Station : Swaroop Nagar

Date of Conviction: 21.4.2011

Arguments heard on: 25.4.2011

Date of Sentence: **30.4.2011**

APPEARANCE:

Present: Sh. Taufiq Ahmed, Addl. Public Prosecutor for the State.
Convict Dinesh Yadav in judicial custody with Sh. B. S.
Solanki, Advocate.

ORDER ON SENTENCE:

Child sexual abuse are dark realities in Indian society like in any other nation. 53 per cent of our children are sexually abused, according to a statistic from a survey done by the Government of India. A 1985 study by the Tata Institute of Social Sciences reveals that one out of three girls and one out of 10 boys had been sexually

abused as a child. 50% of child sexual abuse happens at home. In 1996, Samvada, a Bangalore based NGO, conducted a study among 348 girls. 15% were used for masturbation mostly by male relatives when they were less than 10 years old. 75% of the abusers were adult family members. A report from RAHI, (Recovering and Healing from Incest), a Delhi based NGO working with child sexual abuse titled Voices from the Silent Zone suggests that nearly three-quarters of upper and middle class Indian girls are abused by a family member – often by an uncle, a cousin or an elder brother. (*Rel. on material from Internet*).

In the present case vide detailed judgment dated 21.4.2011 this court has held the accused **Dinesh Yadav** guilty of the offence under **Sections 376 (2) (f)** and **Section 354 Indian Penal Code**. The accused **Bhagwati Devi** has been acquitted of the charges under **Section 376** read with **Section 109** and **Section 506/34 Indian Penal Code**.

The prosecutrix 'A' in this case is a young girl of 15 years and the accused Dinesh Yadav is her stepfather. Her natural father having expired her mother Bhagwati Devi remarried the present accused Dinesh Yadav and has now begotten five children i.e. four girls and one son from the accused. Initially the prosecutrix was residing with her maternal grandmother but later started residing with her mother and the accused (stepfather) after the age of 8 to 9 years. As per the allegations, the accused the stepfather had been raping the prosecutrix over the period of four years prior to the date of the incident and had committed rape upon her on three to four occasions

prior to the incident dated 13.6.2009. Previously when the accused Dinesh Yadav committed rape upon her the prosecutrix complained to her mother Bhagwati Devi (co-accused) who protested the same to the accused but she was physically assaulted and battered. Bhagwati Devi (the co-accused) out of frustration and being fed-up left the house leaving the prosecutrix, a minor girl of 15 years, to fend for herself and for her five siblings (stepbrother and sisters) while the accused Dinesh Yadav also went away leaving the children alone. On the intervening night of 12-13.6.2009 the accused Dinesh Yadav suddenly returned home from the village in the middle of the night at about 12:00 to 12:30. The prosecutrix prepared food and served the same to him and while she was going back to sleep he pulled her chunni and tried to catch her on which the prosecutrix raised an alarm and her younger brother and sisters who were sleeping in the same room also woke up and the neighbours collected on account of which the accused ran away from the spot. The neighbours advised the prosecutrix to report the matter to the police and after a few hours in the morning the prosecutrix was taken to Police Station by one Harish, a young boy staying in the neighbourhood, whom she treated as her brother. The prosecutrix thereafter reported the matter to the police wherein she also specifically told the investigating officer that the accused Dinesh Yadav her stepfather had even previous to this incident had actually committed rape upon her on three to four occasions which fact she had reported to her mother.

Ironically, Bhagwati Devi the natural mother of the prosecutrix who herself is a victim of the atrocities inflicted by the

accused Dinesh Yadav has been made a co-accused in the case. The prosecutrix in her testimony before the court as proved the allegations against the accused but has exonerated the accused Bhagwati Devi and has stated that whenever her mother Bhagwati Devi used to protest to the accused she was beaten and physically abused. In her statement under Section 313 Code of Criminal Procedure before the court the accused Bhagwati Devi has admitted that the prosecutrix had informed her about the accused having raped her about three to four occasions on which she protested but the accused instead used to beat her and on one occasion he broke her arm and therefore, being fed-up and frustrated she left the house of the accused and went to stay with her brothers

Ld. Amicus Curiae appearing on behalf of the convict has prayed that a lenient view be taken against the convict. He has argued that the convict Dinesh Yadav is a young man of 35 years of age having a family comprising of father, wife, six children i.e. one son and five daughters, all are studying. His mother has already been expired. He is 8th class pass and is labourer by profession. The convict has already remained in judicial custody for about **one year ten months and sixteen days** and is not involved in any other case and being a first time offender.

On the other hand, the Additional Public Prosecutor for the State has requested for the maximum sentence to be imposed upon the convict submitting that the convict Dinesh Yadav who is the stepfather of the prosecutrix 'A' who has committed **“intrafamilial child sexual abuse”** upon the prosecutrix 'A' and hence, deserves no

leniency.

I have considered the submissions made. The present case is a glaring example of the growing menace of sexual abuse of minors and young children. Rape is abominable and ghastly and worsens and becomes inhuman and barbaric when the victim is a small female child, close relative of the abuser over whom the family has repose faith as has happened in the present case where the minor has been subjected to unwanted physical contact by a perverted male adult. The convict Dinesh Yadav had been committing rape upon his own stepdaughter (aged about 15 years at the time of reporting) over a period of three to four years. Due to her tender age, neither the body of the child was fully developed nor she was in a position to offer any resistance to the convict. The convict has taken advantage of a helpless and defenceless child who did not even understand the gravity of the offence or tried to escape and was an easy and vulnerable prey. In spite of the tender age of the child, the convict went on to commit the ghastly, abominable, inhuman and barbaric act of rape, violating the person of the child and giving her a lifelong trauma.

Recent years have seen a spurt in molestation, rape and other sexual offences. Sexual predators moving around the city spare none. Be it a child of few months or a senior citizen in a twilight years. Young girls are not safe even in their own families where fathers and brothers turn predators. It is sickening indeed. Rape is a growing menace which the administration is finding hard to tackle. Even stringent punishments so prescribed under the law do not

appear to be having any deterrence.

World over Rape has been considered most abominable and most developed societies provide for a stringent punishment for the same considering it as a grave offence but punishment in most of the countries is imprisonment. In many developed countries **Death Penalty** applies in cases of aggravated rape indicating the severity with which this crime has been viewed. In fact many developed countries like USA, UK, Germany, Israel have experimented with alternatives such as **Surgical and Chemical Castration** of rapists and molesters particularly serial offenders, child molesters and pedophiles.

Chemical Castration is the administration of medication designed to reduce libido and sexual activity, usually in the hope of preventing rapists, child molesters and other sex offenders from repeating their crimes, unlike Surgical Castration, where the testes or ovaries are removed through an incision in the body, Chemical Castration does not actually castrate the person, nor is it a form of sterilization and for this reason the term "Chemical Castration" has been called a misnomer. *Castration* has, from time to time, been used as an instrument of public and/or judicial policy despite concerns over human rights and possible side effects.

Surgical and Chemical Castration is a punishment prescribed for rape and, controversially, some U.S. jurisdictions allow shorter sentences for sex criminals who agree to Voluntary Chemical Castration. *California* was the first U.S. state to specify the use of Chemical Castration as a punishment for child molestation,

following the passage of a modification to Section 645 of the California Penal Code in the year 1996. This law stipulates that anyone convicted of child molestation with a minor under 13 years of age may be treated with the drug Depo Provera if they are on parole, if it is their second offense and offenders may not reject the treatment. The most common drug used for Chemical Castration is Cyproterone Acetate which is used through out in European countries as compared to MPA (Medroxy Progesterone Acetate) which is the preferred drug in America. The passage of this law led to similar laws in other states, such as *Florida's* Statute Section 794.0235 which was passed into law in 1997 and as in California, treatment is mandatory after a second offense. Besides California and Florida, at least seven other states, including *Georgia, Iowa, Louisiana, Montana, Oregon, Texas* and *Wisconsin*, have experimented with Chemical Castration. In *Iowa*, as in California and Florida, offenders may be sentenced to chemical castration in all cases involving serious sex offenses. On June 25, 2008 *Louisiana* Governor Bobby Jindal signed Senate Bill 144, allowing Louisiana judges to sentence convicted rapists to chemical castration. *Poland* had passed a legislation for forcible Chemical Castration for child molesters coupled with psychic treatment during the term. *Germany* and *Israel* are other examples of developed countries where voluntarily chemical castration is a punishment for child rapists. Similarly *Madoza* a province in *Argentina* passed a law in March 2010 which rules the use of Chemical Castration for rapist but they must voluntarily go it.

Chemical Castration is a human alternative to life long imprisonment or surgical castration. Many developed countries use it as a condition for probation or for the purpose of imposing lesser punishment in case of **Plea Bargaining**. Although Chemical Castration is not the perfect solution to inhibit child molestation, it certainly discourages sexual assault better than incarceration. Injections of Depo-Provera, Cyproterone Acetate and MPA (Medroxy Progesterone Acetate) decrease the aggressive tendencies that lead to rape in males. Castration also discourages sexual fantasies and eradicates sexual obsessions. Pedophiles are reduced to apathetic pacifists. Regulated chemical castration should be encouraged as an alternative to prison for child molesters in order to stop recidivism and decrease instances of sexual assault.

Ironically, the Indian legislatures are yet to take notice of this alarming situation and address the issue with all seriousness by exploring the possibility of permitting the imposition of alternative sentences of Surgical Castration or Chemical Castration particularly in cases involving rape of minors, serial offenders and child molesters or as a condition for Probation, or as an alternative sentence in case of Plea Bargaining. I am not oblivious of the fact that arguments are bound to be raised against the above by some Rights Activists but that in my view would be sheer hypocrisy given the damage the rapist and sexual predators do to their victims. The jurist world over are undivided in their view that *Chemical Castration* is required to be mandated for incestuous offenders, repeated sex offenders, pedophiles and molesters.

The convict Dinesh Yadav had been sexually abusing his minor daughter for almost three to four years prior to the reporting of the incident and whenever his wife, the mother of the prosecutrix protested she was badly beaten and battered. The convict in the present case represents the depravity and abysmal depth to which a man can go for here is a case where the convict does not spare his own daughter and beats and batters his wife when she wants to come to her rescue. If this is not the case for which the highest punishment is called for then there can be no other case worse than this. In my view it is time that we as a Civil Society stand up and also think of a law similar to the one existing in many developed countries providing for Surgical and Chemical Castrations. Having said so, my hands are tied since I am bound by the law of the land which only provides for imprisonment not less than seven years but may be for life or for a term which may extend to ten years and also fine. My conscious however tells me that this is a crime which is required to be addressed differently and a full public debate with regard to imposition of Castration (both Surgical and Chemical) as an alternative punishment for the offence of rape and molestation is the crying need of the hour.

In view of the above, I hold that the convict is not entitled to any leniency and I hereby award the following sentences to the convict Dinesh Yadav:

1. The convict Dinesh Yadav is awarded **Rigorous Imprisonment** for a period of **10 (ten) years** and fine to the tune of **Rs.25,000/-** (Rs. Twenty Five Thousand) for the

offence under **Section 376 (2) (f)** read with **506 (Part-II) Indian Penal Code**. In default of payment of fine the convict shall further undergo Simple Imprisonment for a period of **three months**. The total fine of Rs.25,000/- if recovered, shall be paid to the prosecutrix 'A' as compensation under Section 357 Cr.P.C.

2. Further, he is sentenced to **Rigorous Imprisonment** for a period of **two years** for the offence under **Section 354 Indian Penal Code**.

Both the sentences shall run concurrently. The convict is already in judicial custody. He is sent to custody for serving the sentence. **Benefit of Section 428 Cr.P.C. shall be given to the convict for the period undergone by him during the trial, as per rules.**

The convict is informed that he has a right to prefer an appeal against this judgment. He has been apprised that in case he cannot afford to engage an advocate, he can approach the Legal Aid Cell, functioning in Tihar Jail or write to the Secretary, Delhi High Court Legal Services Committee, 34-37, Lawyers Chamber Block, High Court of Delhi, New Delhi.

Copy of the judgment and order on sentence be given to the convicts free of costs and another be attached along with his jail warrants.

Copy of this order is directed to be sent to the Secretary, Ministry of Law & Justice, Government of India (through proper

channel); Chairpersons, National Commission for Women and Delhi Commission for Women for information purposes.

File be consigned to Record Room.

Announced in the open court
Dated: 30.4.2011

(Dr. KAMINI LAU)
ASJ (NW)-II: ROHINI