



Mukand Pur, he committed rape upon her and also criminally intimidated her not to disclose the incident to anybody.

**Case of prosecution in brief:**

The case of the prosecution in brief is that on 23.04.2011 on receiving the receipt of DD No. 58B SI Balwan reached at Balaji Nursing Home, Mukundpur where the victim / prosecutrix 'S' and her parents met him. Thereafter, on 24.04.2011, SI Sushila Rana on the receipt of DD No. 58B reached at BJRM hospital and recorded the statement of Smt. Roop Rekha, mother of the prosecutrix who has stated in her statement that on 23.04.2011 after completing her household works at about 7 to 7:30 PM she left her son Aditya aged 7 years and 'S' (name changed) aged 6 years at the house of her sister-in-law / nanad namely Kaushalya and went to the market for purchasing vegetables and at about 8:30 PM when she returned back, she found her son Aditya at home whereas her daughter 'S' was not there. She inquired from Kaushalya about the whereabouts of 'S' who told her that 'S' is at the house of Chitra Lekha (sister of Roop Rekha). Roop Rekha thereafter went to the house of Chitra Lekha where Bandhu (son of Chitra Lekha) informed her that Nandan had taken away 'S' for ice cream. Thereafter, Roop Rekha along with Chitra Lekha went to the house of Nandan and knocked the door but he did not open the same. Roop Rekha thereafter called Dinbandhu

and asked him to climb the roof of the neighbouring house and enter into the room of the accused. Thereafter, Dinbandhu went inside the room after climbing the roof of the neighbouring house and opened the door after which Roop Rekha also went inside the room and found her daughter 'S' lying on the bed, crying with blood was oozing out from her private part and the accused Nandan was also lying on the bed in drunken condition. Roop Rekha brought the child at home and found her clothes smeared with blood. She asked the child what had happened on which the child told her that Nandan took her away on the pretext of ice cream and took her to his room where he removed her clothes and tied her hands and legs with a rope and put his hand on her mouth and threatened her not to raise alarm or else he would kill her and thereafter he committed rape upon her. Roop Rekha thereafter informed her husband about the incident on telephone while she took the child to the doctor after which the police was called. During investigations the accused Nandan was arrested and after completing the investigations, the charge sheet was filed in the court.

**CHARGE:**

Charges under Section 363/366/376(2)(f)/506 Indian Penal Code were settled against the accused Nandan to which he pleaded not guilty and claimed trial.

## **EVIDENCE:**

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

### **Public Witnesses:**

**PW5 Roop Rekha** has deposed that previously she was residing at Mukundpur along with her family. According to her on 23.4.2011 her house was under construction which work of the day was completed by 6 PM after which she returned home. On that day at about 7:30 PM she left both her children with her sister-in-law / nanad and went to market to purchase vegetables and when at about 8:30 PM she returned, only her son was at home and her daughter was not there. She inquired from her sister in law about her daughter 'S' on which she (sister-in-law) told her that the child 'S' was at the house of her (witness's) sister. According to the witness, she went to the house of her sister where Dinbandhu son of her sister informed her that that Nandan chacha (accued) had taken her daughter 'S' on the pretext of getting her an ice cream. The witness has deposed that thereafter she along with her nanad went to the house of Nandan and knocked the door which was locked from inside. There the TV was playing at full volume and she knocked the door for a very long time but nobody opened the door and therefore she told Dinbandhu (son of her sister) to climb over to the room from the house of the neighbour and to go inside the house and open the door. On this

Bandhu @ Dinbandu entered the house by climbing over the room from the house of the neighbour and opened the door and when she (witness) and her sister entered the house, she saw her daughter lying on the bed in naked condition and she was crying and the accused was lying and sleeping in a condition of drunkenness and there was a glass kept in the room along with a bottle of alcohol and pieces of meat in a bowl (*katori*). According to the witness, her daughter was bleeding from her private part and was crying and on seeing her (i.e. witness), she (child) started crying more loudly. She has further deposed that Nandan who is the real brother of her jija, was sleeping in a *chaddi-baniyan*. She thereafter brought her daughter home and changed her clothes and when she made enquiries from her, the child told her that '*Nandan Mause mujhe le gaya ice cream khilane aur uske baad ander se gate band kar liya*'. The witness has deposed that when she asked the child what happened to her clothes, the child informed her that the accused had removed her clothes, tied her hands & legs with a rassi and gave her a bite on her cheeks. Thereafter he committed rectal/ anal, oral and vaginal rape with her (*Mause ne mere kapde jaldi utar diye aur phir mere hath, paav bandh liye rassi se aur muje daant se gal par kaat diya aur hath aur paav par bhi kata. Phir mere latrine ke rastein se ganda ganda karne ki koshish ki aur phir susu ke rastein se ganda ganda karne ki koshish ki aur mere muh me daal diya yeh keh kar ki ice-cream*

*milegi. Usne muh mein daalne ke liye phir usne muh khol diya).*

According to the witness, the child also told her that the semen of the accused entered the child through her mouth (*phir ladki ne bataya uska paani muh ke dwara andar gaya*). The witness has further deposed that the child has also informed her that the accused did not give her water when she demanded and also threatened her by pressing her throat and told her that he would throw her in a nali (*ki jab maine paani maanga toh nahi diya aur jab main ro rahi thi to kaha gala daba kar naali mein daal dunga*). The witness has deposed that when she seen her daughter at the house of Nandan, she was bleeding. The witness has stated that *jab maine ladki ko dekha to usse bleeding ho rahi thi uske baad usne bataya ki usse usne daaru peene k liye kaha aur meat khane ko bhi kaha aur maine mana kar diya*". According to the witness when she came to know about all these things, she along with her brother took the child to 'Balaji Hospital and also telephoned her husband. She has deposed that at Balaji Hospital, the doctor checked the child and told that this was a rape case and thereafter they called the police who took the child to BJRM hospital where the child was medically examined. According to the witness, during investigations she accompanied the police to the house of Nandan where the police had seized the Chaddi, Baniyan, plastic rassi, gadda (bedding) and taken into

possession vide memo **Ex.PW5/B**. She has deposed that police also taken photographs of the spot and thereafter the accused Nandan was apprehended and arrested in this case vide memo **Ex.PW5/C**. The prosecutrix was handed over to her by the police vide memo **Ex.PW5/D**.

The witness Roop Rekha has also stated that after this incident, her jija namely Raj Kumar who is the real brother of accused Nandan, **had threatened her by saying that after releasing of Nandan bigger incident like this can also be happened if she (witness) deposed against him (Nandan)**. The witness has further deposed that the nephew of Nandan namely Surjeet Kumar who has a criminal record had threatened her by saying that if they depose in the court, reputation of her girl / child can be destroyed in the society and nobody will marry her daughter and also offered her Rs. 1,50,000/- saying that he could give more if nobody marry her daughter, his brother would marry her. She has stated that she had also given a complaint to the SHO concerned in writing in this regard. The witness has identified the accused in the court. She has also identified the various articles/ case property lifted from the spot where the incident took place i.e. Gadda (bedding) **Ex.P1** as the one lifted from the room of Nandan; a cement Katta containing plastic ropes of faded red colour and grey colour is **Ex.P2** as the one with

which his daughter was tied by the accused; one mehroon and one dirty white (off white) coloured towels **Ex.P3** and **Ex.P4** as the same which were lifted from the house of the accused; a banyan and two underwears which are **Ex.P5**, **Ex.P6** and **Ex.P7** as the same belonging to the accused Nandan and another banyan with pink stains **Ex.P-8** also belonging to the accused Nandan.

In her cross examination by Ld. Defence Counsel, the witness has deposed that the house of Nandan is at a distance of about 2 to 3 minutes from the house of her sister. Witness is unable to tell the name of land lord in whose house the accused Nandan was residing on rent at Mukundpur Gali No. 2 ground floor. Witness has also unable to tell the name of the neighbour of Nandan. She has denied the suggestion that she was residing along with Raj Kumar and not separately as claimed by her and has voluntarily added that she was residing separately on rent. The witness was confronted with her statement given to the police **Ex.PW5/A** wherein she had given the address of Raj Kumar on point Mark X. She has explained that she was residing at the house of one Dhirender at that time and has voluntarily added that she informed about the same to the police when she made her statement but since she was perplexed and confused therefore she does not recollect what exactly she had told. She has deposed that she took her daughter from the house of Nandan in nude condition but before entering the house of her



brother, she hurriedly put a frock and pajami belonging to her daughter which she had lifted from the bed of Nandan. She has further deposed that her daughter was not given proper treatment at Balaji hospital and has voluntarily added that it was only preliminary treatment which was given. She has told to the police in her supplementary statement **Ex.PW5/DX1** about her daughter telling her about the accused tying her with a rope and then having raped her and also having oral sex with her on threatening her. She has denied the suggestion that she was having a dispute with Nandan in connection with the construction of house and brother in law of Nandan who is a labour was asked to stop the work in her house on which she took revenge. She has further denied that she have falsely implicated Nandan in this case.

**PW7 Chandan Gupta** has deposed that at present he is residing at his native village at Rajasthan. He has deposed that previously he was residing at Mukundpur, Delhi and at the time of the incident his house was under construction in Delhi and his wife was residing with the family of Raj Kumar in the house of Raj Kumar who is the husband of his wife's sister. According to him he used to visit his family on Saturdays and go back on Monday morning. He has further deposed that on 23.4.2011 at about he was on his way to Nimrani, Rajasthan to Delhi by bus when he received a call from his wife on mobile phone number 8058297654. According

to him his wife was apparently seeming disturbed and when he asked the reason on which she only told him that there was a misbehaviour with his daughter and she was serious. The witness has further deposed that he told her (his wife) not to worry and also inquired where she was when she told him that she was at Balaji Hospital. He has deposed that at that time he was between Gurgaon and Dhaula Kuan and reached Balaji Hospital straight away. According to him, his daughter was on the bed in the hospital and the doctor had refused to give her any treatment stating that it was a police case. On court question the witness has stated that in his presence no treatment was given and he is not aware if prior to that she was treated or not. According to him when he reached the hospital, police had already reached there. He deposed that within half an hour his daughter was shifted to BJRM Hospital where she was given treatment and statements of his wife and daughter were recorded. He has further deposed that at about 3-3:30 AM (midnight) he went to the police station along with his daughter where their statements were formally recorded and his daughter was handed over to him and his wife vide memo **Ex.PW5/D**. On the next day he brought the child to the Rohini Courts where her statement was recorded by Ld. MM under Section 164 Cr.PC **Ex.PX3-Colly**.

On leading questions put by the Ld. Addl. PP the witness has deposed that he does not recollect if the personal search of

accused Nandan was conducted in his presence but admits signatures on personal search memo **Ex.PW7/A** at point mark A. The witness has further admitted that the pointing out memo / nishan-dei was prepared in his presence and has voluntarily added that it was prepared at the spot of incident itself. He has further admitted that the clothes of Nandan and other articles were lifted by the IO at the house of Nandan and the seizure memo **Ex.PW5/B** bearing his signatures at point B and the signatures of his wife were also taken at point A. According to the witness, he did not tell the IO that Nandan was arrested on the pointing out of his daughter / prosecutrix and has voluntarily added that he had already been apprehended at that time on the pointing out of his wife and child. The witness has correctly identified the accused Nandan in the court. He has also identified the various articles/ case property lifted from the spot where the incident took place i.e. Gadda **Ex.P1** as the one lifted from the room of Nandan; a cement Katta containing plastic ropes of faded red colour and grey colour is **Ex.P2** as the one with which his daughter was tied by the accused; one mehroon and one dirty white (off white) coloured towels **Ex.P3** and **Ex.P4** as the same which were lifted from the house of the accused; a banyan and two underwears which are **Ex.P5**, **Ex.P6** and **Ex.P7** as the same belonging to the accused Nandan and another banyan with pink stains **Ex.P-8** also belonging

to the accused Nandan.

In his cross examination by Ld. Defence Counsel, the witness has deposed that he had reached the Balaji hospital between 11:45 PM to 12 AM. He admits that his statement was recorded by the police on 24.4.2011 and he informed the police about everything which he has told to the court. According to him, he had not told the police that he had reached home by 9:30 PM and has voluntarily added that he reached much later. The witness was confronted with his statement **Ex.PW7/DX1** where this aspect regarding the witness reaching home by 9:30 PM finds a mention. He has further deposed that he did not tell the police that he had reached Balaji Hospital between 11:45 PM to 12 AM and has voluntarily added that the police was already present in the hospital and they new about his presence. He has deposed that he was coming by bus and from Dhaula Kuan he took an auto because of an urgency directly reached the hospital and has voluntarily added that he had got off little before the hospital at the Mukundpur barrier because he was not aware of the hospital. According to him when he reached the hospital, apart from the police, his wife, daughter, he did not pay attention who else was present there. He has denied the suggestion that the time of incident he was at Nimrani Rajasthan and did nor reached the Balaji hospital as claimed by him and in fact reached much later. Her has further denied that the personal search memo, seizure memo and the

pointing out memo were got signed by him later by the IO only to create evidence of him presence at the spot at the time of the conduct of investigation proceedings. He has also denied that the documents have been signed ante-datedly by the IO and has deposed falsely in this regard. The witness has also denied that there was a financial dispute between him and the accused Nandan and his brother Raj Kumar in connection with the construction work being done in his house as Nandan had asked his brother-in-law/ sala not to carry out any labour work in him house which was under construction.

**PW9 Brijesh** has deposed that he is a professional photographer and on 24.4.2011 at about 11/11:30 AM on the asking of local police he accompanied the police officer by the name of Pandey to Gali No. 1 Mukundpur where some incident of rape had occurred with a child and he was asked to take photographs of the spot and on the directions of the police he took the photographs of the site and prepared copies of the same which photograph is **Ex.PW9/A** which he had taken with digital camera and therefore there are no negative.

In his cross examination by Ld. Defence Counsel, the witness has deposed that he is doing the business of the photography for the last 27 years and is having shop in the area for the last 7 years and his shop used to open from 10 AM to 8:30 PM. The witness has admitted that even previously he has been called by the police to take

photographs and has voluntarily added that police used to call him off and on for small works. He has denied that he is a stock witness of the police and the photographs were taken by him ante-datedly at the instance of the IO.

**PW11** is the child **Prosecutrix 'S'** whose statement has been recorded in question answer form in vernacular. She has deposed *Khushbu kae papa (accused Nandan) ice cream khila kar ghar lekar gayae tha. tala band kar diay jo baad men Bandhu ne khola. Tala band karne ke baad sula diya. Khusbhoo kae papa ne hath paav bandh diye thye phir muh mein ghusa diya* (witness has stated by pointing out towards her mouth and neck). *Uske baad pant nikal diya aur khoon aa raha tha* (witness has pointed out towards her private parts). *Thappad bhi maara. Uske baad bola jeebh nikal, maine apna muh band kar diya. Dard hua tha* (by pointing towards her private parts). *Gandi chiz ki and latrine waali jagah part jath laga kar galat galag kaam kiya.* Child pointed out her cheek and lips and has stated that *yahan dard huha tha. Daru pilaya tha aur bola tha ki chup ho jao maarunga aur naali me patak dunga. Bola tha chaaku se kaat dunga. Latrine laga to latrine nahi karne diya. Pesab bhi laga tha nai karne diya.* The child by pointing out towards her private parts stated that *yahan khoon yaya tha.* She further pointed out towards her private parts and neck and stated that *yahan par ghaav hua tha.* The witness has further deposed that previously

before the Ld. MM also she has stated whatever the accused had did with her. The child witness has pointed out towards the accused Nandan and stated that *hey Kushboo kae papa hain. Inhone hi ganda ganda kiya tha.*

In her cross examination by Ld. Defence Counsel, the child witness has denied the suggestion she has deposed on the tutoring of her parents and the investigating officer. She has further denied that the police had already shown the accused to her. The witness has further deposed that the accused Nandan is the person who had committed wrong act upon her.

**PW14 Rajesh Kumar** has deposed that he is running the aforesaid hospital and no doctor in the name of Rajesh was working in the Balaji Charitable Hospital. He has deposed that on 24.04.2011 the victim/ prosecutrix along with her mother Smt. Roop Rekha had come to his hospital. He has deposed that he found the blood stains on the cloth of the prosecutrix and made inquiries from the mother of the prosecutrix to which Smt. Roop Rekha informed him that one Nandan, brother of mausa of victim / prosecutrix Raj Kumar had committed wrong act with the prosecutrix victim / prosecutrix. He further deposed that he also asked her to take the victim to government hospital and by that time the father of the prosecutrix had also come to the hospital who requested him to examine his daughter victim/ prosecutrix but he (witness) had refused. The

witness has deposed that he thereafter made a call at 100 number and they all left his hospital.

In his cross examination by Ld. Defence Counsel, the witness has deposed that the victim and her mother had come to his hospital at around 7-7:30 PM but no entry regarding arrival of prosecutrix and her relative was made in his hospital. According to him the PCR came at the hospital at about 8:45-9 PM. He has denied that he did not make any call to the PCR or that he is deposing falsely.

**PW15 Rama Shankar** has deposed that he is presently residing on the given address and is working at the Airport as Senior Supervisor and he had three sons one of has expired. According to him on 23.04.2011, he came to his house at about 9 PM and at that time his sister Roop Rekha was perplexed when he asked her as to what happened to which she told him that “*victim / prosecutrix ke sath kuch ho gaya hai*” he, his sister Roop Rekha took victim / prosecutrix to Balaji hospital. According to the witness, the doctor checked the victim victim / prosecutrix and thereafter asked them to go to government hospital as the case is of a rape. Thereafter, they took victim / prosecutrix to BJRM hospital along with the police and the the accused Nandan was arrested by the police later on.

In his cross examination by Ld. Defence Counsel, the witness has deposed that they reached at Balaji hospital at about 9:30



PM and the PCR came at Balaji hospital after 10 PM. He has denied that they did not take the victim victim / prosecutrix to the said hospital.

**PW16 Bandhu** child witness below 12 years of age has been examined without oath in Camera in chamber on the request of Addl. Public prosecutor in question answer form. He has deposed that he is residing at Gali No.2, Mukund Vihar, Part-2, Mukundpur, Delhi along with his parents and brother and is studying in Jyoti Model School in class 6<sup>th</sup>. He has deposed that the prosecutrix 'S' is the daughter of his Mausi and when their house was under construction, they used to reside with his family in his house. The witness has further deposed that Nandan is his Chacha and resides in other gali and is a driver. According to him on the date of **incident they all were playing when Nandan took away the prosecutrix 'S' and Adit by offering them an ice cream.** He has deposed that at that time his mother and Mausi had gone to Market and on their return from Market, they asked them (witness) about the whereabouts of the prosecutrix 'S' and thereafter they all went to the house of Nandan. On court question the witness has deposed that he along with his mother, mausi and Adit had gone to the house of Nandan. He has further deposed that when they reached at the house of Nandan, they knocked the door and called him but he did not open the door. According to him, thereafter his mother asked the lady in

the neighbourhood to permit them to go on the roof as Nandan was not opening the door and thereafter he (witness) climbed on the roof and entered in the house of Nandan and saw the inside door was open whereas the main door was locked from inside. According to the witness he opened the main gate on which his mother, mausi and Adit entered the room. They saw that the accused **Nandan was sleeping on the bed while the prosecutrix 'S' was over his body and was crying.** According to the witness, his mother and mausi took home the prosecutrix 'S' and thereafter took her to the Hospital. The witness has deposed that when he was coming out of the room of accused, the accused Nandan woke up and put off the light of room. According to him, **when he came along with the police, the accused was trying to ran away after climbing the stairs/ jeena.** He deposed that when he earlier gone at the room of accused, the said stairs / jeena was not there. On court question the witness has deposed that **when he saw the prosecutrix in the room of Nanda, she was naked and there were teeth bites injuries on her body and blood was oozing out.**

In his cross examination by Ld. Defence Counsel, the witness has deposed that on the first occasion he along with his mother, mausi, maami (Mama's wife) and Adit had gone to the house of accused. He deposed that the house from whose roof he entered

inside the house of accused was single story. According to him when they all entered in the room and taken away the prosecutrix, the accused was sleeping and did not wake up. The witness has deposed that **when Nandan had taken the prosecutrix and Adit for ice cream, only Adit return back whereas Nandan had taken away the prosecutrix with him.** According to the witness, his mother, mausi and other persons came out from the gate which he had opened from inside. The witness has deposed that when they took the prosecutrix to his home his (witness's) mama also came there who checked the prosecutrix and took her to the hospital. The witness has denied the suggestion that he has deposed falsely on the asking of his parents.

**PW17 Chitra Lekha** has deposed that she is residing at the given address with her family comprising of husband and two boys. She has deposed that her sister Roop Rekha was having a plot in Delhi where she was getting the construction done and at that time she used to reside in her (witness's) house. According to the witness, on the date of the incident she had taken another house on rent in the same gali where she was staying with her two children i.e. one boy and one girl i.e. prosecutrix 'S'. She has further deposed that on 23.04.2011, the prosecutrix 'S' and her brother Adit had come to her house and were playing with her children and the children of her brother Rama Shanker who was residing on the first floor. The witness has further deposed that while all the children were playing ,

she and her sister went to purchase vegetables from the market and on the way while they were still in the gali, she saw the accused Nandan who is her brother-in-law (Devar) and is a driver was coming back in her presence he parked the vehicle in front of her. According to the witness, after sometime they came back and her sister Roop Rekha went back to her house and after sometime at about 8-30 p.m. Roop Rekha came back and was searching for victim/ prosecutrix thinking that she was still at her house. The witness has further deposed that she told her (Roop Rekha) that she (Prosecutrix) was not there and it was then that all the children i.e. her children and the children of her brother who were present at her house told them that while they were playing, Nandan came and forcibly lifted victim / prosecutrix on the pretext of giving her ice cream on which he took Adit and prosecutrix 'S' with him and after sometime Adit returned with an ice cream but Nandan carried away the prosecutrix with him at his house. The witness has further deposed that on hearing what the children had said, she immediately alongwith Roop Rekha and her Bhabhi Usha Rani and all the children went to the house of Nandan which is in the same gali and knocked at the door of the house of Nandan repeatedly but he did not open the door. According to the witness, they heard loud noises of television coming from inside and when accused did not open the door on repeated knocking, Roop Rekha started crying and on this,

they made a request to the next door neighbour and sought permission to allow her child to go on the roof from her house as Nandan was not opening the door. The witness has further deposed that on this the neighbour permitted the same and her (witness's) son Din Bandu with her another nephew Krishna aged about 12 years who is deaf and dumb went to the roof through the house of the neighbour after which her son Bandhu entered the house of Nandan from the roof and opened the latch of the door. The witness has further deposed that thereafter, they i.e. herself, her sister and Bhabhi entered the room of Nandan and saw Nandan sleeping on the bed and was under the influence of liquor. They also saw one bottle of alcohol kept alongwith a glass kept in the room and also some bones of the meat which he must have consumed lying in a katori while Nandan was sleeping on the bed by holding the prosecutrix 'S' in his hand. According to the witness the prosecutrix was was crying and was not wearing any clothes and she was bleeding from her private parts and one of her lip was swollen and there were bite marks all over her body. The witness has deposed that on seeing her condition, her sister (Roop Rekha) immediately lifted the child (prosecutrix) and her clothes were also lying on the bed and they immediately brought her back to their house. According to the witness, thereafter they took the prosecutrix to her brother's portion on the first floor and on checking they found that she was bleeding from her private parts

and on seeing this, her brother Rama Shanker immediately shifted the prosecutrix to Balaji hospital. The witness has further deposed that in the meanwhile the father of the prosecutrix 'S' who was employed at Rajasthan and used to come at every weekend had also reached. According to the witness, the prosecutrix was first taken to Balaji hospital at Mukundpur where she was provided some treatment and the doctor confirmed that the rape had been committed upon the child and they called up the police and from there the prosecutrix was shifted to BJRM hospital in a police van and they also reached there.

In her cross examination by Ld. Defence Counsel, the witness has deposed that she did not tell the IO that initially Adit had also been taken by Nandan but he returned with the ice cream and has voluntarily added that children had told her this fact. She has further deposed that she had also not told the IO that when they reached the house of Nandan they heard the noises of television from inside and has voluntarily added that the IO never asked all these details. She also did not tell the IO in her statement that when the prosecutrix was found in the room, she was not having any clothes on her body and has voluntarily added that IO never questioned her on these aspects while recording statement **Ex.PW17/DA**. The witness has further deposed that her relations with Nandan were not cordial and has voluntarily added that about four years back at about

3 AM (midnight) Nandan had tried to commit a sexual assault on her (witness) and had tried to commit rape when her husband who was a driver at call centre but she somehow saved herself and she informed this fact to her husband on which her husband asked her to remain careful in future and thereafter their relations were not good with Nandan. The witness has further deposed that this was the third incident of misbehaviour by Nandan in their family since **on one prior occasion the daughter of one of their close relatives had come to stay at their house who was aged about 12-13 years when at night Nandan had caught hold of her but she was alert and could offer resistance.** According to the witness, being a family matter, these incidents have been previously suppressed but her husband had distanced himself from Nandan and all the relatives were careful from him. The witness has admitted that there was also a money dispute between her husband and Nandan and has voluntarily added that in the month of February there was a dispute between her husband and Nandan because Nandan wanted money from her husband for purchase of machine and there was Hathapai and therefore the relations with their family and Nandan were not good otherwise. The witness has denied the suggestion that on account of personal enmity with Nandan, they implicated him in the present case. She does not know the name of the lady from whose house they had gone to the house of Nandan and has voluntarily

added that she is an elderly lady and she otherwise know her as she is residing in the same gali. The witness has further deposed that she cannot tell whether her (that lady) husband or male members were at home at that time. Witness has admitted that it is not possible for any other person to have entered the room of Nandan the way her son entered and has voluntarily added that her son had gone inside only after they were permitted by the neighbours to do so from their roof by putting a stairs. According to the witness, so far as she recollect, the house from where her son had entered was single storey. She has denied that any other person could have easily accessed the house of Nandan and committed the offence and run away from there keeping advantage of the fact that Nandan was intoxicated. She has also denied that her sister had taken rent from a person at Mukundpur on the surety of her husband.

**Medical / Forensic Evidence:**

**PW4 Dr. Dhruv Sharma**, Assistant Director Biology, FSL, has deposed that on 30.05.2011 four parcels duly sealed with seal of MS BJRM hospital were received in his office in connection with this case which he were examined and submitted his detailed reports **Ex.PW4/A** and **Ex.PW4/B**.

In his cross examination by Ld. Defence Counsel, the witness has denied the suggestion that he prepared the above reports at the instance of the IO. On court question what does he mean by



inconclusive result, the witness has explained that inconclusive means that the grouping result was insufficient to give a definite opinion. On further question by the court that in the present case what was the reason for inconclusive reports, the witness has deposed that in the present case on Ex.1A, weak reaction was found for the blood group A, B and O which could be due to bacterial infection changing either the blood group or destroying the blood group antigen and in case of Ex.6F, weak reactions for blood group B and O were present due to which it could not be concluded. On further court question whether semen was detected on any of the exhibits the witness has deposed **that human semen was detected on Ex.1a (Pyjama), 1b(i) & 1b(ii) (vaginal secretions) and 6 (f) (towel).**

**PW6 Dr. Shipra Rampal**, Radiologist, BJRM Hospital, has deposed that on 30.04.2011, she was working as Radiologist and on that day she examined the X-ray plate of the prosecutrix 'S' aged about 6 years female and **estimated the bone age as between 5 to 6 years** vide her detailed report which is **Ex.PW6/A** bearing her signature at point A and the X-ray form is **Ex.PW6/B**.

In her cross examination by Ld. Defence Counsel, the witness has admitted that she had not conducted the X-ray of the prosecutrix. She further admits that she did not see the X-ray Plate of the prosecutrix or that she had given the aforesaid report without

seeing the X-ray plate only on the asking of the IO. She has denied the suggestion that she has estimated the wrong age of the prosecutrix.

**PW8 Dr. Gopal**, CMO, BJRM hospital, has deposed that on 24.04.2011 he was working as CMO at BJRM Hospital and Dr. Shailesh Pratap Singh was working as JR casualty who examined the patient victim / prosecutrix, D/o Sh. Chandan Gupta, aged about 6 years, female under his supervision brought by PCR with alleged history of sexual assault vide MLC **Ex.PW8/A** bearing signatures of Dr. Shailesh Pratap at point A and bearing his name at point B. According to the witness, the patient was referred to SR Gynae for further examination. According to the witness on the same day Dr. Suhail who was working as JR, casualty at the aforesaid hospital under his supervision, has examined the patient Nandan vide MLC **Ex.PW8/B** bearing the signatures of Dr. Suhail at Point A. The witness has deposed that the patient was referred to surgery SR for further examination, treatment and opinion. The witness has deposed that on the same day Dr. Amit Kumar Singh was also working as SR Surgery in the said hospital who also examined the patient Nandan and has given his opinion at point E bearing his signatures at point F. The witness has deposed that he is well conversant with the handwriting and signatures of Dr. Shailesh Pratap, Dr. Sushil and Dr. Amit Kumar Singh having seen them while writing and signing

during his official course of duties. The witness has not been cross examined on behalf of the accused despite opportunity in this regard.

**PW13 Dr. Meenakshi** has deposed that on 24.04.2011, he was working as SR Gynae at BJRM Hospital and on that day the prosecutrix/ victim was referred for gynae department for her medical examination with alleged history of sexual assault. He examined the victim vide MLC **Ex.PW8/A** bearing her signatures at point C and on local examination she was found with **swelling on both lips which was positive, bite marks present on upper lip, hymen appeared torn but no fresh bleeding seen at that time, labia minora lacerated on both sides, clotted blood seen, fourchette lacerated.**

The witness has not been cross examined on behalf of the accused despite opportunity. On court question the witness has deposed that laceration of labia minora and Fourchette would mean that **extensive force was used on a child.**

**Police / Official Witnesses:**

**PW1 L/Ct. Jaishree** has been examined by way of affidavit which is **Ex.PW1/1**. According to the witness on 23-24/4/2011 on the instructions of senior officers, went to Balaji Hospital and received one sealed parcel from the doctor which she further handed over to the IO SI Sushila Rana who seized the same

vide memo **Ex.PW1/A**. The witness has also relied upon the DD No. 58B which is **Ex.PW1/B** bearing her signatures at point A.

In her cross examination by Ld. Defence Counsel, the witness has denied the suggestion that all the documents were prepared while sitting in the police station and she have signed the same at the instance of the IO. According to the witness she was on duty at night and she had reached Balaji Hospital at night but exact time she cannot tell but it could be approximately around 12.30AM (midnight). After going through the DD entry **Ex.PW1/B**, the witness states that she reached the hospital at 11.25PM.

**PW2 HC Himmat** has been examined by way of affidavit which is **Ex.PW2/1**. According to him on 30.5.2011 he was posted as MHC (M) in police station Bhalaswa Dairy. He has relied upon document i.e. entry in register No. 19 vide entry No. 217/11 copy of which is **EX PW 2/A** running into 4 pages, entry in register no.21 vide No. 37/21/11 copy of which is **Ex.PW2/B** and receipt issued by FSL copy of which is **Ex.PW2/C**.

In his cross examination by Ld. Defence Evidence the witness has denied the suggestion that the entries in the register no.19 have been manipulated and fabricated later on at the instance of the IO ante-datedly. He has further denied that the contents of the seizure memo have been mentioned in column no.4 because he have never

handed over the exhibits.

**PW3 HC Jagat Singh** has been examined by way of affidavit which is **Ex.PW3/1**. He has deposed that during the intervening night of 23/24.4.2011, he was posted as duty officer at police station Bhalaswa Dairy. He has relied upon the document i.e. copy of FIR registered by him which is **Ex.PW3/A** bearing his signatures at point A and endorsement on rukka which **Ex.PW3/B** bearing his signatures at point A.

In his cross examination by Ld. Defence Counsel, the witness has denied the suggestion that the entries made in the register are ante-timed and ante-dated or he has made the manipulations at the instance of the IO.

**PW10 HC Paramjit** has deposed that on 23.4.2011 he had received a call at 23:11 hours from Balaji Hospital Mukundpur regarding sexual assault on a child aged about 5½ years by a close relative which child was in the hospital for which police was requested to be sent which form No. 1 is **Ex.PW10/A**. He has not been cross examined on behalf of the accused despite opportunity.

**PW12 SI Balwan** has deposed that on 23.04.2011, he was posted at Police Station Bhalswa Dairy and on that day he was working on emergency duty from 8PM to 8AM. He has deposed that on that day on the receipt of DD No. 58B **Ex.PW1/B**, he reached at

Balaji Nursing Home, Mukundpur where the victim/ prosecutrix and her parents met him. He made inquiries from the Dr. Rajesh whose name was known to him later on and her parents. According to him, on inquiry he came to know that the case was pertaining to rape therefore he narrated the facts to SHO and thereafter the SHO sent L/Ct. Jai Shree, Ct. Laxman and Ct. Amit to the hospital. He along with the aforesaid police officials, victim and her parents reached at BJRM hospital, Jahangirpuri and at the same time SI Sushila Rana reached at BJRM hospital. According to the witness, he had produced the victim and her parents before the IO SI Sushila Rana and the medical examination of victim/ prosecutrix was got done after which L/Ct. Jai Shree took the exhibits of the victim and handed over the same to the IO. Thereafter, the IO made inquiries from victim and her parents also and recorded the statement of mother of Victim namely Roop Rekha, which is **Ex.PW5/A**. Thereafter, the IO prepared rukka and handed over the same to Ct. Amit who got the case registered. The witness has deposed that thereafter they took the victim to the house of one Swami Nath, the owner of the house situated at Gali No. 2, Mukund Vihar Part I, Mukund Pur Delhi where victim and her mother had identified the accused Nandan who was found sleeping on the bed. The witness has further deposed that the victim has identified the accused Nandan as the same person who has committed rape upon her and thereafter he apprehended the

accused and interrogated who disclosed his name as Nandan. According to the witness, Ct. Amit brought the FIR and original rukka at the place of incident and handed over the same to the IO and the accused Nandan was arrested in this case vide memo **Ex.PW5/C** and his personal search was conducted vide memo **Ex.PW7/A**. Thereafter, IO prepared the site plan at the spot and the disclosure statement of accused was recorded vide **Ex.PW12/A**. After his arrest, the medical examination of accused was got done at BJRM hospital and exhibits were also taken and seized by the IO vide memo **Ex.PW12/A**. According to the witness, one gudri (dari type cloth used in place of bed sheet), one towel of mahroon color having the blood stains, two underwear, two white baniyan, one plastic rope were lifted from the bed and all these articles were converted into parcels and sealed the same with the seal of SR and taken into possession vide seizure memo **Ex.PW5/B**. The witness has identified the accused in the court. He has also identified the case property in the court i.e. two underwears of blue and brown color, one baniyan, two towel (one of white and one of mahroon), one nylon rope and one gudri. The Gudri is **EX P 1**, rope is **EX P2**, mahroon and dirty white towel are **EX P3** and **EX P4**, baniyan belonging to accused Nandan is **EX P5**, two underwears are **EX P6** and **EX P7** and another baniyan is **EX P8**.

In his cross examination by Ld. Defence Counsel, the witness has deposed that he received DD No. 58B at about 11:25 PM and at that time he was at Bhalswa pull where he had gone to attend a call regarding quarrel and left the police station at about 11:20 PM but he no ravangi was made by him in the police station when he left the same. He reached at Balaji hospital at about 11:45 PM and at that time Dr. Rajesh was also present there. He has denied that no person in the name of Dr. Rajesh was working in the said hospital. He received the call on his mobile phone from the land line phone of the police station. According to him on the receipt of earlier call regarding quarrel he went to Bhalswa pull and he made efforts to trace the complainant but none met him. He left the Balaji hospital at about 12/12:15 night and he remained present at BJRM hospital for about 2 ½ hours. He has deposed that they reached at the house of Swami Nath at about 4 AM which house was single storey as was visible from the front side. He did not notice the floors of the adjacent houses on both sides of the house of Swami Nath. According to him, there was no apparent injury on the body of the accused at that time however he did not check the body. He has denied the suggestion that he or the IO did not call the public witnesses deliberately in order to suppress the true facts.

**PW18 SI Sushila Rana** has deposed that on 24.4.2011, she was posted at RCI Cell, Sub division Jahangirpuri and on that



day on the receipt of DD No. 58B regarding rape she reached at BJRM hospital where SI Balwan, Ct. Laxman Pandey, L/Ct. Jaishree and Ct. Amit were already present. According to the witness, SI Balwan Singh narrated the facts of this case to her and had produced the victim and her parents before her (witness) and she made inquiries from the victim her parents. She got medical examination of victim/ prosecutrix conducted through L/Ct. Jai Shree, collected the MLC of victim/ prosecutrix, recorded the statement of Smt. Roop Rekha, mother of the prosecutrix which is **Ex.PW5/A**, prepared rukka **Ex.PW18/A** and got the FIR registered through Ct. Amit. She took the exhibits into possession vide seizure memo **Ex.PW1/A** and thereafter left for the search of the accused and reached at the house of Swami Nath and the accused Nandan was found sleeping on the bed. The witness has deposed that Ct. Laxman Pandey got the accused woke up and SI Balwan along with police staff were also present when the prosecutrix had identified the accused Nandan as the same person who committed rape upon her after which Ct. Laxman Pandey apprehended the accused. According to the witness, the accused was interrogated and arrested in this case vide memo **Ex.PW5/C** and personally searched vide memo **Ex.PW7/A** after which he was throughly interrogated and she recorded his detailed disclosure statement which is **Ex.PW12/A**. The witness has deposed that thereafter she prepared the memo of pointing out which is

**Ex.PW18/B.** The witness has thereafter prepared the site plan at the instance of victim/ prosecutrix vide **Ex.PW18/C** and called the private photographer and got the place of incident photographed vide photographs **Ex.PW9/A1** to **Ex.PW9/A3**. According to the witness, she lifted one godri, two towels of grey and mehroon color having blood stains, two underwear, two white baniyan and one plastic rope from the bed of the room where the accused was residing as tenant and converted the said articles into parcels and sealed the same with the seal of SR and took into possession vide seizure memo **Ex.PW5/B**. She has further deposed that the prosecutrix was handed over to her parents vide memo of handing over **Ex.PW5/D** and the parents of the prosecutrix were relieved. The accused was thereafter medically examined vide MLC **Ex.PW8/B** at BJRM Hospital and the exhibits were received and taken into possession vide memo **Ex.PW12/A**. She also collected the PCR forms which is **Ex.PW10/A**. According to the witness, on 26.04.2011, she got the statement of the prosecutrix recorded U/S 164 Cr. P.C. vide proceedings **Ex.PX3** and collected the copy thereof. On 28.04.2011, she got the bone age X-Ray of the child was conducted vide MLC **Ex.PW18/D** and the endorsement of the doctor is **Ex.PW6/A** in which the doctor has estimated the age of the child prosecutrix in between 5-6 years. Thereafter, on 30.05.2011, she send the exhibits

of both the prosecutrix and the accused to FSL through Ct. Negi vide RC No. 37/21/11 and collected the FSL result which is **Ex.PW4/A** and **Ex.PW4/B** vide covering letter **Ex.PW4/C**. She has identified the accused in the court. She has also identified the case property i.e. Gudri **EX P 1**, rope **EX P2**, mahroon and dirty white towel **EX P3** and **EX P4**, baniyan belonging to accused Nandan **EX P5**, two underwears **EX P6** and **EX P7** and another baniyan **EX P8**.

In her cross examination by Ld. Defence Counsel, the witness has deposed that she received the DD No. 58B at about 12:45 AM (midnight) when she was at her home at that time and reached at BJRM hospital at about 1:15 AM (midnight). She recorded the statement of Smt. Roop Rekha, the mother of the prosecutrix at BJRM hospital where she stayed till 3:30 AM (midnight) and thereafter they all reached the spot at about 4 AM. According to the witness, when they reached the house of accused, they found the door opened and they found some minor marks of injury on the body of the accused when he was found lying in his house. The witness has deposed that during the investigations, she came to know that the public persons had beaten him as he was under the influence of liquor though no liquor bottle was found in the house of accused and the house hold articles were not found scattered in the house. She admits that there is only one entering door in the room shown in the photograph. Witness has further deposed that when the accused was

being apprehended he tried to escape towards the door side. Witness has denied she did not conduct the investigations properly or that all the documents were prepared by her while sitting in the police station. She has also denied that the accused Nandan has been falsely implicated in this case after beating him in the police station.

**Statement of Accused and Defence Evidence:**

After completing the prosecution evidence, statement of accused was recorded under Section 313 Code of Criminal Procedure in which all the incriminating evidence / material was put to him which he has denied. He has stated that he is innocent and has been falsely implicated by the complainant there by a family dispute. He further states that the complainant demanded money from him for construction of the house which he refused due to which reason they have falsely implicated him in this false case. The accused Nandan has further stated that the complainant, her sister and other relatives have come to his house and given him beatings due to which reason he sustained injury on his head on account of which he became unconscious and when he regained his consciousness he found himself at the police station.

**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

considered the testimonies of various witnesses examined by the prosecution and also gone through the written memorandum of arguments filed on behalf of accused.

**Identity of the accused:**

The identity of the accused Nandan is not disputed. He has been specifically named in the FIR because he was previously known to the family of the prosecutrix / victim being the *devar* of her *Mausi*. Even otherwise, he has been correctly identified by the prosecutrix in the court. This being the background, the identity of accused Nandan stands proved and established.

**Age of the prosecutrix:**

The case of the prosecution is that at the time of the incident the child was aged about six years (*as reflected from the MLC*) which aspect has not been disputed. Further, according to the bony X-ray report duly proved by PW6 Dr. Shipra Rampal, the estimated age of the prosecutrix has been shown as 5 to 6 years. Therefore, under these circumstances, I hold that at the time of incident the child victim was aged between **5 to 6 years**, which aspect has not been disputed.

**Medical Evidence:**

PW8 Dr. Gopal and PW13 Dr. Meenakshi have proved the MLC of the child prosecutrix vide **Ex.PW8/A** and the MLC of the accused vide **Ex.PW8/B** showing that there is nothing to show

that the accused was incapable of performing sexual act. He has not been cross examined and the entire evidence has gone uncontroverted.

Dr. Meenakshi (PW13) has also proved the contents of the MLC of the child. She has proved that on local examination of the prosecutrix, she found **swelling on both lips positive, bite marks present on upper lip, hymen appeared torn; no fresh bleeding seen, labia majora was lacerated on both sides, clotted blood was seen and fourchette lacerated.** Dr. Meenakshi has explained that laceration of labia majora and fourchette would mean that **extensive force was used upon the child.**

**Modi** in his book on **Medical Jurisprudence 12<sup>th</sup> Edition page 336** has given the characteristics of injuries which may be received by the victim of an aggressive sexual assault as under:

*“Marks of violence on the body: the body, especially the fore arms, wrist, face, breasts, chest, lower part of abdomen inner aspects of thighs and back, should be examined for marks of violence, such as scratches, abrasions and bruises, as a result of struggle. If present, they should be properly identified, recorded and carefully described as regards their appearance, extent, situation and probable duration. Such marks are more likely to be found on the bodies of grown up women who are able to resist than on the bodies of children who are incapable of offering any*

*resistance. There may be teeth marks on breasts, nipples, cheeks or lips.... In the case of struggle the victim frequently scratches the assailant, any broken nails should be noted and debris under the nails removed carefully by a tooth pick.”*

In the present case the child victim was first taken to the Balaji Hospital where on her examination the doctor finding that it was a case of sexual assault upon the child, the doctor made a call on 100 number and thereafter a PCR came at about 8:45 to 9 PM. Thereafter on examining the physical condition of the child, she was referred to a government hospital. According to Rajesh Kumar (PW14) the witness from Balaji Hospital, the child was brought to the hospital by her mother Smt. Roop Rekha and he found the blood stains on the clothes of the child and when he made inquiries from her mother he came to know that one Nandan, who is the brother of Raj Kumar the mausa of the child, had committed a wrong act upon the child. Further, it is evident from the MLC of the child that there were bite marks all over her body particularly on her face/ lips and the lips of the child was swollen. This being the background, I hold that the medical report of the child supports and corroborates the prosecution version regarding aggravated sexual assault, and rape having been committed upon the child victim.

**Forensic Evidence:**

PW4 Dr. Dhruv Sharma has proved the biological report **Ex.PW4/A** and serological report **Ex.PW4/B**. He has proved that human semen was detected on **Ex.1(a)** i.e. **pyjama of the child** having brown stains on which blood stains were detected, **Ex.1b(i)** and **Ex.1(b)** i.e. **vaginal secretion** and **Ex.6(f)** i.e. **reddish towel**, though, the serological report is inclusive. The witness has explained that 1A weak reaction was found for the blood group A, B and O which could be due to bacterial infection changing either the blood group or destroying the blood antigen. In case of the 1A (*i.e. pyjama of the child*) and in case of the towel, there was weak reaction on blood group A, B and O due to which it could not be concluded. However, presence of human semen in **Ex.1(a)** i.e. **pyjama of the child**, **Ex.1b(i)** and **Ex.1(b)** i.e. **vaginal secretion** and **Ex.6(f)** i.e. **reddish towel**, is relevant and conclusive which confirms the version given by the child prosecutrix and other prosecution witnesses and conclusively connects the accused with the alleged offence. The prosecution has also placed its reliance on the photograph of the spot taken by the photographer which show the presence of blood at the spot of the incident. PW9 Brijesh who is a professional photographer had taken the photographs of the site with digital camera which are **Ex.PW9/A1** to **Ex.PW9/A3**, which conclusively proves that there



was blood on the floor of the room where the alleged incident of rape had taken place with the child.

**Allegations against the accused:**

Case of the prosecution is that the child prosecutrix had been residing in Delhi along with her mother and as their house was under construction, they initially used to reside in the house of Chitra Lekha who is the sister of her mother. Later, Roop Rekha the mother of the prosecutrix shifted to a separate premises on rent near the house of Chitra Lekha. She has also deposed that her two children i.e. her daughter 'S' (prosecutrix) and son Aditya used to play with the children of Chitra Lekha. Nandan, the accused before this court, is the Devar of Chitra Lekha and the child often called him Mausaji. On the date of alleged incident while the children of Roop Rekha were playing with Dinbandhu @ Bandhu (son of Chitra Lekha) and the children of the brother of Roop Rekha namely Rama Shanker who is also residing on the first floor, Roop Rekha had gone to the market for purchasing the vegetables and during this period the accused Nandan came and took the prosecutrix to his room on the pretext of buying her an ice cream where he played the TV on full volume and consumed the alcohol and thereafter he committed rape and aggravated sexual assault upon the child 'S'. In this regard the testimony of Roop Rakha (PW5), Chitra Lekha (PW17) and the child witness Dinbandhu @ Bandhu (PW16) (who had gone inside the

house of Nandan and opened the door from inside) would be relevant. Dinbandhu who is below 12 years of age is the first cousin of the prosecutrix with whom the child victim was playing at the time when the accused Nandan had taken her away. Dinbandhu is the witness who saw the child victim without her clothes while she was held by the accused over him. The testimony of the child Dinbandhu

@ Bandhu (recorded in question answer form is as under:

***“Question: victim / prosecutrix Kaun Hai?”***

***Answer: victim / prosecutrix Meri Mausi Ki Ladki Hai. Jab Inka Ghar Ban Raha Tha to woh hamere saath reh rahi thi. Nandan Mere chacha hain aur wo dusri gali main rehte hain aur gari chalate hain.***

***Question: Jab victim / prosecutrix Ke Saath incident hua tab tum kya kar rahe the?***

***Answer: Hum sab khel rahe the. Mere Chacha Nandan (accused before the court) victim/ prosecutrix and Adit Ko Jo ki victim/ prosecutrix Ka Bhai hai, ice cream khilane ke liye le gaye . Hame Nahi Le Gaye. Mammi aur Masi Market Gai Thi. Wapis Aane Par Unohane Hamse Pucha victim/ prosecutrix Kahan Hai to Ham sab Nandan Chacha Ke Ghar Gaye.***

***Court question : Kaun Kaun Nandan Ke Ghar Gaye?***

***Answer: Main, Meri Mammy, Mausi aur Adit Nandan Ke Ghar Gaye.***

***Question: Phir Kya Hua?***

***Answer: Jab Darwaja Khatkhataya aur awaj***

*lagai to Nandan Ne Darwaja Nahi Khola. Mammy Ne Bagal Wali Aunty Ko Kaha ki Woh Hame Chat Par Se Jane Dein, Chacha Gate Nahi Khol Rahen Hain. Mai Chat Ke Upar Se Chacha Ke Ghar Main jump Mar kar gaya. Maini dekha ki Ander Ka darwaja khula tha par bahar wale darwaje par ander se kundi lagi thi. Maini Gate Khola to mammy , mausi aur Adit ander aaye. **Chacha bed ke upar so raha the. victim / prosecutrix unke upar thi aur ro rahi thi.** Mammy aur Mausi victim/ prosecutrix Ko ghar wapis laye. Phir Hospital Le Gaye. Main Kahena Chahta Haun Ki Jab Main Bahar Aa Raha Tha to chacha Neh Uth Kar light bund kar di. Jab Main police ke saath aya to chacha jeena lagakar bhag rahe the. Jab Main Mammy , Mausi ke saath gaya tha to pahle jeena nahi tha.*

***Court question : Jab victim / prosecutrix tumahare chacha ke paas thi to kya tab usne kapre pahne the ?***

***Answer: Tab victim/ prosecutrix Ne Kapre Nahi Pahne the. Uske sara sharir par dant ke nishan the aur khoon bhi than.”***

I may mention that Dinbandhu is the child who had last seen the prosecutrix with the accused when accused was taking her away on the pretext of getting her an ice cream. Thereafter when the mother of the victim and his mother inquired about the child, he informed them that he had seen the accused Nandan taking her and

thereafter had gone to the house of Nandan where he found the TV playing on full volume and the door which was locked from inside which he could not open. Thereafter on the asking of the mother of the prosecutrix he climbed on the roof of the adjacent house and entered inside the room of accused and opened the door from inside.

Coming now to the testimony of Roop Rekha (PW5), the relevant portion of which is as under:

*“ I have two children, one son who is elder and one daughter. At 7:30 PM I left both my children with my Nanad/ sister in law and went to the market for purchasing vegetables. When I returned home at 8:30 PM only my son was at home but my daughter was not present there. I inquired from my sister in law about my daughter (victim/ prosecutrix) on which she told me that she (child prosecutrix) was at my sister's house. The house of my sister is near my house and when I reached her house, her son namely Deen Bandhu who is aged about 12 years told me that Nandan Chacha had taken my daughter (victim/ prosecutrix) for getting her an ice cream. Thereafter, I along with my sister went to the house of Nandan the door was locked from inside and the TV was playing at full volume. I knocked the door for a very long time but when nobody opened the same I told my nephew Bandhu to climb over the roof from the house of neighbour and go inside the house and open the door. On this Bandhu entered the house by climbing over the roof from the house of the neighbour and opened the door and when I and my sister entered the house I saw my daughter*

*lying on the bed in naked condition and she was crying. The accused was lying down and sleeping in a condition of drunkenness. There was a glass kept in the room along with bottle of alcohol and pieces of meat in a Katori. My daughter was bleeding from her private parts and was crying and on seeing me she started crying very loudly. The accused Nandan who is the real brother of my Jija, was sleeping in a Chaddi Baniyan. I brought my daughter home and changed her clothes and when I made enquiries from her on which she told me that "Nandan Mause mujhe le gaya ice cream khilane aur uske baad ander se gate band kar liya. I asked her what happened to the clothes on which she replied "Mause ne mere kapde jaldi jaldi utar diye aur phir mere hath, paav bandh diye rassi se aur muje daant se gal par kaat diya aur hath aur paav par bhi kata. Phir mere latrine ke rastin se ganda ganda arkne ki koshish ki aur phir susu ke rastein se ganda ganda karne ki koshish ki aur mere muh me daal diya yey keh kar ki ice-cream milegi. Usne muh mein daalne ke liye phir usne muh khol diya.*

*"..... phir ladki ne bataya uska paani muh ke dwara andar gaya. My daughter thereafter told me that ki jab maine paani maanga toh nai diya aur jab main ro rahi thi to kata gala daba kar naali mein daal dunga.*

*When I had seen my daughter at the house of Nandan she was bleeding. The witness has stated that jab maine ladki ko dekha to usse bleeding ho rahi thi uske baad usne bataya ki use usne daaru peene k liye kaha aur meat khane ko bhi kaha aur maine mana kar diay". (written/ typed*

*in vernacular).*

*When I came to know about all these things, I along with my brother took the child to Balaji Hospital. I also telephoned my husband who used to come to Delhi on Saturdays and on the same day, he reached at Balaji Hospital. At Balaji Hospital the doctor checked my daughter and told that this is a rape case (Balatkar ka mamla hai) and informed the police. Thereafter, the police shifted my daughter to BJRM hospital and there she was given medical treatment.”*

Now coming to the testimony of Chitra Lekha (PW17) the mausi of the victim and the real Bhabhi/ sister-in-law of the accused, relevant portion of which is as under:

*“ My sister Roop Rekha was having a plot in Delhi where she was getting the construction done. At that time she used to reside in my house. On the date of the incident she had taken another house on rent in the same gali where she was staying with her two children i.e. one boy and one girl i.e. victim / prosecutrix. On 23.04.2011 victim/ prosecutrix and her brother Adit had come to my house and were playing with my children and the children of my brother Rama Shanker who is residing on the first floor. While all the children were playing I and my sister went to purchase vegetables from the market. On the way while we were still in the gali I saw the accused Nandan who is my brother-in-law(Devar) and is a driver was coming back and in my presence he parked the vehicle in front of me. After sometime we came back and my sister Roop Rekha went back*

*to her house. After sometime at about 8-30 p.m. my sister came back to my house and was searching for victim / prosecutrix thinking that she was still at my house. I told her that she was not there and it was then that all the children i.e. my children and the children of my brother, who were present at my house told us that while they were playing, Nandan came and forcibly lifted the victim/ prosecutrix on the pretext of giving her ice cream on which he took Adit and victim/ prosecutrix with him. They also told us that after sometime Adit returned with an ice cream but Nandan carried away victim / prosecutrix with him at his house. On hearing what the children had said I immediately alongwith my sister Roop Rekha and my Bhabhi Usha Rani and all the children went to the house of Nandan which is in the same gali. We knocked at the door of the house of Nandan repeatedly and he did not open the door. We heard loud noises of television coming from inside. When he did not open the door on our repeated knocking my sister Roop Rekha started crying. On this we made a request to the next door neighbour and sought her permission to allow my child to go on the roof from her house as Nandan was not opening the door. On this the neighbour permitted the same and my son Din Bandu with my another nephew Krishna aged about 12 years who is deaf and dumb went to the roof through the house of the neighbour after which my son Bandhu entered the house of Nandan from the roof and opened the latch of the door. Thereafter, we i.e. myself, my sister and my Bhabhi entered the room of Nandan. We saw Nandan sleeping on the bed. He was under the influence of liquor. We saw one*

*bottle of alcohol kept alongwith a glass kept in the room and also some bones of the meat which he must have consumed lying in a katori while Nandan was sleeping on the bed by holding victim/ prosecutrix in his hand. Victim/ prosecutrix was crying . She was not wearing any clothes and she was bleeding from her private parts. One of her lip was swollen . There were bite marks all over her body. On seeing her condition my sister immediately lifted victim/ prosecutrix. Her clothes were also lying on the bed and we immediately brought victim/ prosecutrix back to our house. Thereafter we took victim/ prosecutrix to my brother's portion on the first floor and on checking we found that she was bleeding from her private parts. On seeing this my brother Rama Shanker immediately shifted the victim/ prosecutrix to Balaji hospital. In the meanwhile the father of victim / prosecutrix who was employed at Rajasthan and used to come at every weekend had also reached. She was first taken to Balaji hospital at Mukundpur where she was provided some treatment. There, the doctor confirmed that the rape had been committed upon the child victim/ prosecutrix and they called up the police and from there victim/ prosecutrix was shifted to BJRM hospital in a police van and we also reached there.”*

Both Roop Rekha (PW5) and Chitra Lekha (PW17) have corroborated each other on all material particulars and have also been cross examined at length. In fact, their testimonies find due corroboration from the testimony of child witness Dinbandhu @



Bandu (PW16).

It is further evident from the cross examination of these witnesses that a defence has been raised by the accused that since the accused Nandan was in intoxicated position hence the possibility of some other person having entered the room of Nandan in the same manner as the child Dinbandhu had entered and having committed rape upon the child, cannot be ruled out. I have considered the submissions on this aspect and I am of a considered view that his defence on the face of it is fallacious in view of the testimony of the child who has specifically identified the accused Nandan as the person (whom she has referred to as *Khusbhu kae papa* who had committed wrong act upon her. In fact, this court has repeatedly questioned the victim on this aspect and the child prosecutrix has informed the court that Nandan was the same person whom she used to refer *Khushbu kae papa* and he is the one who had committed the wrong act upon her (*gandi gandhi chiz kiya tha aur mara tha*).

Now coming to the testimony of the child prosecutrix 'S' (PW11), relevant portion of which is as under:

- “Q.            *Aap Khushboo ko jaante ho?*  
A.            *Yes (By nodding her head).*  
Q.            *Khushboo kahan rehti hai?*  
A.            *Ghar par.*  
Q.            *Tum Khushboo ke ghar gaye the?*  
A.            *Yes (By nodding her head).*  
Q.            *Kuch hua tha waha?*

- A. Yes ( By nodding her head).
- Q. *Kya hua tha?*
- A. *Ice-cream khila kar ghar lekar gayae tha.*
- Q. *Phir kya kiya?*
- A. *Taala band kar diya?*
- Q. *Baad mein taala kisne Khola?*
- A. *Bandhu ne.*
- Q. *Taala band karne ke baad kya kiya?*
- A. *Sula diya (made me sleep).*
- Q. *Kuch aur huya tha?*
- A. *Khushboo kae papa ne hath paav bandh diye the **phir muh mein ghusa diya** (witness has stated by pointed out towards her mouth and neck).*

Here I may observe that the child has pointed out that oral rape (i.e. carnal intercourse against the order of nature) had been committed on her. She has further deposed as under:

- Q. *Uske baad kya kiya?*
- A. *Pant nikal diya aur khoon aa raha tha (witness has pointed out towards her private parts). Thapad bhi maara. Uske baad bola jeebh nikal, maine apna muh band kar diya.*
- Q. *Dard hua tha?*
- A. Yes (By nodding her head).
- Q. *Kahan dard hua tha?*
- A. By pointing her private parts said “**yaha hua tha**”.
- Q. *Aur kya kiya?*
- A. **Gandi chiz ki.**
- Q. *Aur kuch kiya tha?*

A. *Latrine wali jagah par jath laga kar galat galat kaam kiya.*

Q. *Aur kahin dard hua tha?*

A. Child pointed out her cheek and lips and has stated “*Han, yahan mara tha*”.

It is evident from the above that the accused had not only committed vaginal rape upon her but also anal/ rectal rape as alleged by the child. She has also proved that she was assaulted on her cheeks and lips. In fact medical evidence proves the existence of bite marks on the cheeks and lips of the child and the mother, mausi and cousin of the child who rescued her also mention above these marks in their oral testimonies. The child has further deposed as under:

Q. *Kuch khilaya tha?*

A. *Yes (By nodding her head).*

Q. *Kuch pilaya tha?*

A. *Daaru (by whispering very softly in the ear).*

Q. *Kuch bola tha?*

A. *Yes (By nodding her head) chup ho jao maarunga aur naali mei patak dunga.*

Q. *Aur kya bola tha?*

A. *Bola tha chaaku se kaat dunga.*

Q. *Aur kuch hua tha?*

A. *Latrine laga toh latrine nai karne diya. Peshab bi laga tha nai karne diya.*

Q. *Khoon kaha aya tha?*

A. Child pointed out her private part and stated that “*yaha par*”.

Q. *Ghaav kaha hua tha?*

A. Child pointed out her private part and stated that “yaha par and gale mei bhi hua tha”.

(Note: This again proves that the accused committed both oral and vaginal sex with the child)

Q. *Kisne bola tha?*

A. *Khushboo kae papa ne bola tha.*

Q. *Kya aap pehle bhi yahan aaye they?*

(This question has been put in relation to the statement of the child u/s 164 Cr.P.C.).

A. *Haan* (By nodding her head).

Q. *Tab kya hua tha?*

A. *Pucha tha.*

Q. *Kisne pucha tha?*

A. *Uncle ne.* (meaning the Magistrate)

Q. *Phir aapne unko kya bataya?*

A. *Jo kuch Khushboo kae papa ne gandhi chiz ki thi.*

Q. *Aap Khushboo kae papa ko jaante ho?*

A. *Yes* (By nodding her head).

Q. *Aap unhe pehchan loge?*

A. *Yes* (By nodding her head).

At this stage, accused produced from JC and made to stand outside the Chamber within the sight of the child who was inside the room after which the child has responded as under.

A. *Yeh Khushboo kae papa hain. Inhone hi ganda ganda kiya tha.*

(On this, to reassure itself the Court told the child to see the accused once again.)

**Court Question:** *Dhyan se dekho aur batao ki kya yeh vahi hain*

**Answer:** *Yahi hain Khushboo kae papa.*

**Court Question:** *Inhone kya kiya tha?*

**Answer:** *Inhone hi gandi gandi chiz kiya tha aur mara tha”*

Further, the testimony of child prosecutrix in the court corroborates what she had stated in her statement under Section 164 Cr.PC recorded before Ld. MM, the relevant portion of which is reproduced as under:

*“mai apni mammy, papa, bua aur bhaiyon ke sath rehti hoon. Bhai ka naam Aditya hai.*

**(Court observation: The witness / prosecutrix is not able to tell the sequence, so statement is now recorded in question answer form).**

**Ques.:** *What is your father's & mother's name?*

**Ans.:** *Mere papa ka nam Chandan Gupta hai aur mammy ka nam Roop Rekha hai.*

**Ques.:** *Who has brought you here ?*

**Ans.:** *meri mummy aur papa aaye hain. Police hamare ghar gai thi.*

**Ques.:** *How have you received injuries on your lips?*

**Ans.:** *mujhe Khushboo kae papa ne mara hai. (suddenly she abused him saying sala kutta).*

**Ques.:** *How is Khushboo's father related to you ?*

**Ans.:** *wo mera mausa lagta hai. Maine char bar chillaya ki papa bacha lo, mammy bacha lo, bua bacha lo, baiya bacha lo.*

**Ques.:** *How did Khusbhoo's father take you?*

**Ans.:** *mai mausi ke ghar khel raha tha. wahan se wo mujhe le gaya.*

**Ques.:** *Do you know the name of Khushboo's father?*

**Ans.:** ***Haan. Uska naam Nandan hai. Nandan T.V. dekhta hai. Meri mammy Nandan ko mari.***

**Ques.:** *Did he do anything else to you?*

**Ans.:** *mere sare kapre utar diye aur meri susu wali jagah ko chata.*

**Ques.:** *How did you come back home?*

**Ans.:** *meri mammy Nandan ke ghar aaye thi. She again abused him as sala kutta, haramzada, uska haath bahut chalta hai. Usne mujhe seedi se gira diya tha. mai do minute me sara khana khatm kar deta hoon.*

**Ques.:** *How has Khushboo's father injured you?*

**Ans.:** *usne mujhe haath se mara. Maine paani manga paani nahi diya, latrine aya nahi karne di. Mere haath pair baandh diye thye. rassi mere papa ke pass ghar pe rakhi thi. Usne (Khusboo kae papa ne) mujhe gilaa me bharkar daroo pilai thi. Fir meri jeebh par dant kata tha. Wo kah raha tha ki natti daba dunga aur chhat par jaakar fenk dunga. (she stated that natti means neck).*

*She again asked accused as sala and requested that police be asked to arrest the accused (khusboo kae papa). She voluntarily speaks that she does all the home work given to her.*

**Ques.:** *What else did Khusboo's father do to you?*

**Ans.:** ***Khusboo kae papa ne apni pesab wali jagah mere muh aur pesab wali jaga dali. Mujhe niche khoon nikal raha tha. uper khoon aya tha.***

It stands established from the aforesaid:

- ➔ That Roop Rekha (PW5) and Chitra Lekha (PW17) are real sisters and at the time of the incident Roop Rekha was staying in Delhi with her children (the prosecutrix 'S' and Adit) while her husband was residing at Rajasthan and used to come on weekends.
- ➔ That Bandhu @ Dinbandhu (PW16) is the son of Chitra Lekha who is the real Bhabhi of accused Nandan and Dinbandhu is his real nephew.
- ➔ That on the date of the incident i.e. 23.4.2011 Roop Rekha and Chitra Lekha went to the market for purchasing vegetables and while they were on the way, the accused Nandan (driver by profession) was seen coming back after parking his vehicle.
- ➔ That Nandan had taken the child victim 'S' and her brother Adit on the pretext of giving ice cream to them but when Roop Rekha and Chitra Lekha returned back from the market whereas the prosecutrix did not return.
- ➔ That when Roop Rekha did not find the child she made inquiries when the children told her that Nandan had taken the child on the pretext of giving her ice-cream on which Roop Prekha, Chitra Lekha, Din Bandhu and others came to the house of Nandan and when they reached the house of Nandan

they found the TV playing on full volume and the room was found locked inside and despite repeated knocking of the door Nandan did not open the same.

- That thereafter the child Dinbandhu entered the house of Nandan through the roof of the neighbour's house after taking permission and putting a ladder after which he opened the latch of the door from inside and thereafter Roop Rekha and Chitra Lekha entered the room of accused Nandan.
- That when Roop Rekha and Chitra Lekha entered the house of accused Nandan they saw the accused Nandan in an intoxicated condition only in an underwear and baniyan holding the child 'S' who was crying and was totally naked.
- That at the time when the child 'S' was recovered from the house of Nandan she was having bite marks all over her body with swelling on her lips and was bleeding from her private parts.
- That the photographs **Ex.PW9/A-1** to **Ex.PW9/A-3** establish the presence of blood on the floor adjoining the bed where the accused Nandan was found lying with the child on him.
- That the child victim 'S' has correctly identified the accused Nandan both by name and also as *Khushboo kae papa* and as the person who had done *Gandi Cheez* with her and caused pain to her.



- That the accused first removed the clothes of the child 'S' and thereafter tied her hands and legs with a rope (rope was recovered from the room and proved vide seizure memo **Ex.PW5/B**).
- That accused compelled the child victim to consume alcohol and eat non-veg.
- That the accused had oral sex with her by putting his penis inside her mouth. The child had also told her mother Roop Rekha that during this process his (Nandan) semen has entered her mouth (*uska paani muh ke dwara andar gaya*).
- That the accused also committed rectal/ anal rape with the child prosecutrix who has specifically deposed that the accused put his penis inside her rectum (by referring to as *latrine wali jagah*).
- That the hymen of the child was torn, libia majora was lacerated on both sides, clotted blood was seen and fourchette lacerated proving the use of extensive force upon the victim.
- That the accused Nandan had extended threats to the child victim to the effect that he would kill her by slitting her throat and throw her in the drain/ nali.
- That there was presence of semen stains on the pajami of the child, vaginal secretions and reddish towel conclusively establishing the commission of rape upon the child (FSL report

**Ex.PW4/A).**

- ➔ That on previous occasion the accused Nandan had even caught hold of his Bhabhi Chitra Lekha (PW17) when her husband was not at home but she was able to save her honour and she even informed her husband about the same, who instead asked her to remain careful in future but concealed this fact from his family members.
- ➔ That on another occasion Nandan had caught hold of another girl aged about 12-13 years when she had come to stay at the house of Chitra Lekha along with her family but the girl was able to resist and save herself and therefore, the family members were made aware of the conduct of Nandan and hence they were careful from him though no action was taken.

I may observe that the element of tutoring the child victim is ruled out in view of the fact that immediately after the child was rescued, she was rushed to Balaji Hospital and thereafter taken to BJRM Hospital and soon after her treatment on the next day within a matter of hours her statement was recorded before the Ld. MM under Section 164 Cr.P.C. on the very next day who also noticed the injuries over her body and when he asked as to how she received injuries, the Ld. MM was informed by the child that it was the accused who had bitten her. Further, the possibility of tutoring is

also ruled out on account of the fact that at the very first instance the child and her family disclosed the incident to the doctors or else there was no reason why the oral swabs were taken. Here, I may note that in case of oral rape unless the oral swab is immediately taken it is difficult to retrieve the semen which has entered the digestive track.

Even otherwise, Chitra Lekha being the real Bhabhi and Dinbandhu being the real nephew, there is no reason why they would have falsely implicate the accused more so when they were already under heavy pressure from their family particularly from Raj Kumar the real brother of the accused Nandan not to depose against him.

The Ld. Defence Counsel has vehemently argued that in view of the enmity between the accused and the family of the victim, he has been falsely implicated. I have given my careful thought to the submissions so made and I do not tend to agree with the same for the reason that in a conservative Indian family no parent would use their 5-6 years old daughter as an instrument to settle their personal scores or to expose her to such a risk and danger only to seek revenge from the accused. No parent would depose falsely implicating somebody of ravishing their child's chastity by sacrificing and jeopardizing her future prospects of having a family life and invite wrath of being ostracized and out caste from the society to which they belong and from their family circle. The accused Nandan is closely related to the family of the victim. Once the child victim has

herself appeared in the Court and testified against him, there is no reason to necessitate any corroboration for her testimony. Minor contradictions and discrepancies cannot be a ground to throw out her testimony. [Ref.: *Vishnu Vs. State of Maharashtra* reported in **2006 AIR (SC) 508**; *State of Himachal Pradesh Vs. Asha Ram* reported in **AIR 2006 SC 381**].

The testimony of the child prosecutrix finds due corroboration from the testimony of child witness Dinbandhu and also the testimonies of Roop Rekha and Chitra Lekha who had rescued her from the house of the accused Nandan. The oral testimonies of the witnesses and also the medical and forensic evidence brought on record leaves no doubt in the mind of the court that it was none else but the accused Nandan who had kidnapped the victim / prosecutrix 'S' aged 6 years from the lawful guardianship of her parents in order to force her to illicit intercourse and thereafter committed upon her and also threatened her saying that he would slit her throat in case she disclosed the same to anybody.

#### **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 principles of law to the facts of present case, it is evident that the investigations conducted including the documents prepared in the present case have been substantially proved by the police witnesses including the investigating officer. It

stands established that Roop Rekha and Chitra Lekha are real sisters and at the time of the incident Roop Rekha was staying in Delhi with her children (the prosecutrix 'S' and Adit) while her husband was residing at Rajasthan and used to come on weekends. It also stands established that Bandhu @ Dinbandhu is the son of Chitra Lekha who is the real Bhabhi of accused Nandan and Dinbandhu is his real nephew and on the date of the incident i.e. 23.4.2011 Roop Rekha and Chitra Lekha went to the market for purchasing vegetables and while they were on the way, the accused Nandan (driver by profession) was seen coming back after parking his vehicle. It further stands established that Nandan had taken the child victim 'S' and her brother Adit on the pretext of giving ice cream to them but when Roop Rekha and Chitra Lekha returned back from the market whereas the prosecutrix did not return. It also stands established that when Roop Rekha did not find the child she made inquiries when the children told her that Nandan had taken the child on the pretext of giving her ice-cream on which Roop Prekha, Chitra Lekha, Din Bandhu and others came to the house of Nandan and when they reached the house of Nandan they found the TV playing on full volume and the room was found locked inside and despite repeated knocking of the door Nandan did not open the same. It further stands established that thereafter the child Dinbandhu entered the house of Nandan through the roof of the neighbour's house after taking

permission and putting a ladder after which he opened the latch of the door from inside and thereafter Roop Rekha and Chitra Lekha entered the room of accused Nandan and saw the accused Nandan in an intoxicated condition only in an underwear and baniyan holding the child 'S' who was crying and was totally naked and at the time when the child 'S' was recovered from the house of Nandan she was having bite marks all over her body with swelling on her lips and was bleeding from her private parts.

The photographs **Ex.PW9/A-1** to **Ex.PW9/A-3** establish the presence of blood on the floor adjoining the bed where the accused Nandan was found lying with the child on him. The identity of accused Nandan as the person who had committed the crime with the child stands established since the child victim 'S' has correctly identified the accused Nandan both by name and also as *Khushboo kae papa* and as the person who had done *Gandi Cheez* with her and caused pain to her. The child victim 'S' has established that the accused first removed her clothes and thereafter tied her hands and legs with a rope and thereafter compelled her to consume alcohol and eat non-veg/ meat. She has further proved that the accused thereafter had oral sex with her by putting his penis inside her mouth and also disclosed to her mother Roop Rekha that during this process his (Nandan) semen has entered her mouth (*uska paani muh ke dwara andar gaya*). It also stands established that the accused Nandan

committed rectal/ anal rape with the child prosecutrix who has specifically deposed that the accused put his penis inside her rectum (by referring to as *latrine wali jagah*). It further stands established that while committing the crime the accused Nandan extended threats to the child victim to the effect that he would kill her by slitting her throat and throw her in the drain/ nali.

The medical evidence establishes that the hymen of the child was torn, libia majora was lacerated on both sides, clotted blood was seen and fourchette lacerated proving the use of extensive force upon the victim and the forensic evidence establishes the presence of semen stains on the pajami of the child, vaginal secretions and reddish towel conclusively establishing the commission of rape upon the child.

It also stands established that even on previous occasion the accused Nandan had even caught hold of his Bhabhi Chitra Lekha when her husband was not at home but she was able to save her honour and she even informed her husband about the same, who instead asked her to remain careful in future but concealed this fact from his family members. It is further established that on another occasion Nandan had caught hold of another girl aged about 12-13 years when she had come to stay at the house of Chitra Lekha along with her family but the girl was able to resist and save herself and therefore, the family members were made aware of the conduct of



Nandan and hence they were careful from him though no action was taken. This is borne out from the testimony of Chitra Lekha and there is no reason to disbelieve her. It is writ large that all these previous incidents have been concealed and suppressed by the family perhaps to save their honour. No action, legal or otherwise, was taken against the accused and the only thing which the family did was to distance themselves from the accused. This in my view is the biggest mistake with any reasonable person can commit. Having come to know that a person in the family is a sexual pervert who spares none, it was not only necessary for the other members of the family particularly the male members to have checked him and taken suitable action against him which they did not do. Had this been done at the first instance I am sure the incident could have been certainly prevented. It is the primary duty of each adult member of the family particularly the males to identify and act against persons exhibiting these kind of sexual tendencies and aberrations and timely intervention can certainly prevent such incidents of dastardly acts against women and children in which which the family of Nandan miserably failed. It is ironical that rather on the contrary their attempt was to assist the accused by trying to prevent the material witnesses like Chitra Lekha and Din Bandhu from deposing in the Court. It was observed during the trial that Raj Kumar the real brother of the accused Nandan and his other relatives had pressurized

the family of the child prosecutrix particularly Chitra Lekha the wife of Raj Kumar not to depose in the court due to which reason initially Chitra Lekha did not appear in the Court and a Notice was issued to Raj Kumar. I may also observe that after Raj Kumar appeared in the Court, he admitted having prevented his wife Chitra Lekha and son Dinbandhu from coming to the Court but thereafter immediately apologized for the same and undertook not to subject his wife (Chitra Lekha) and child (Dinbandhu) to any kind of harassment on account of the deposition made by them in the Court. It is certainly commendable that despite such pressures they have stood up and brought out the truth in the court.

There are two stages in the criminal prosecution. The first obviously is the commission of the crime and the second is the investigation conducted regarding the same. In case the investigation is faulty or has not been proved in evidence at trial, the question which arise is whether it would absolve the liability of the culprit who has committed the offence? The answer is obviously in negative, since any lapse on the part of the investigation does not negate the offence. The prosecution has 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, 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 and forensic evidence and the witnesses of the prosecution have been able to built up a continuous link.

In view of the above discussions, I hereby hold that the prosecution has been successfully able to prove the allegations against the accused Nandan of having abducted/ kidnapped the prosecutrix 'S' aged about 6 years from the lawful guardianship of her parents in order that she be forced or seduced to illicit intercourse; having committed oral and vaginal rape upon the prosecutrix; of having committed anal/ rectal rape upon the prosecutrix against the order of nature and also of having criminally intimidated the minor girl 'S'; of having abducted/ kidnapped the prosecutrix 'S' aged about 6 years from the lawful guardianship of her parents in order that she be forced or seduced to illicit intercourse; having committed oral and vaginal rape upon the prosecutrix; of having committed anal/ rectal rape upon the prosecutrix against the order of nature and also of having criminally intimidated the minor girl 'S'. Here, I may observe that though initially the accused was only charged for the offence under Sections **363/366/376(2)(f)/506 Indian Penal Code** but it has

appeared in the evidence that apart from the offence of committing vaginal rape, the accused had committed oral/ rectal rape upon the child. Therefore though he has not been charged of the same yet he is hereby held guilty not only for the offences under **Sections 363/366/376(2)(f)/506** Indian Penal Code but also under **Section 377** Indian Penal Code (Ref.: Section 221 Cr.P.C.) and accordingly convicted.

Be listed for arguments on sentence on 31.1.2012.

Announced in the open court  
Dated: 24.01.2012

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



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.

This is an unfortunate case where the prosecutrix namely 'S' aged about 5-6 years was raped by her Mause (real brother of husband of her Mause). At the time of the incident i.e. on 23.4.2011 the child was residing in Delhi at Mukundpur along with her brother Adit and mother Roop Rekha while her father was residing in Rajasthan and used to come on weekends. Roop Rekha was initially residing in the house of her sister Chitra Lekha since her own house was under construction but at the time of the incident was residing in another house in the neighbourhood. The accused Nandan who is the brother in law (dewar) of Chitra Lekha was also residing there. On 23.4.2011 Roop Rekha and Chitra Lekha went to market for purchase

of vegetables while the prosecutrix 'S' and her brother Adit were playing with the children of Chitra Lekha. On the way while they were still in the gali they saw the accused Nandan who is a driver by profession coming back after having parked his vehicle. After Roop Rekha returned they did not find the prosecutrix 'S' on which the children with whom the prosecutrix was playing, told them that while they were playing Nandan had come and on the pretext of giving ice cream he took the girl 'S' and her brother Adit with him and after sometime Adit returned with an ice cream but Nandan took the prosecutrix 'S' with him at his house. Thereafter both Roop Rekha and Chitra Lekha along with one Usha Rani (Bhabhi of Chitra Lekha) and the children went to the house of Nandan situated in the same gali and despite repeatedly knocking the doors the accused Nandan did not open the door. On this they made a request to the next door neighbour and sought permission to allow the son of Chitra Lekha namely Dinbandhu and it was only thereafter that Dinbandhu along with other boy Krishna went to the house of the accused through the roof of neighbour and opened the latch of the door. Thereafter, both Roop Rekha and Chitra Lekha entered the house of accused Nandan and saw the girl 'S' in a naked condition while the accused was sleeping in an intoxicated condition by holding the child 'S' in his hand. The child was crying and was found bleeding from her private parts and one of her lip was swollen and there were bite

marks all over her body.

On the basis of the evidence on record it stands established that Roop Rekha (PW5) and Chitra Lekha (PW17) are real sisters and at the time of the incident Roop Rekha was staying in Delhi with her children (the prosecutrix 'S' and Adit) while her husband was residing at Rajasthan and used to come on weekends. It is also established that Bandhu @ Dinbandhu (PW16) is the son of Chitra Lekha who is the real Bhabhi of accused Nandan and Dinbandhu is his real nephew and on the date of the incident i.e. 23.4.2011 Roop Rekha and Chitra Lekha had gone to the market for purchasing vegetables and while they were on the way, the accused Nandan (driver by profession) was seen coming back after parking his vehicle. It is further established that Nandan had taken the child victim 'S' and her brother Adit on the pretext of giving ice cream to them but when Roop Rekha and Chitra Lekha returned back from the market whereas the prosecutrix did not return and when Roop Rekha did not find the child she made inquiries when the children told her that Nandan had taken the child on the pretext of giving her ice-cream on which Roop Prekha, Chitra Lekha, Din Bandhu and others came to the house of Nandan and when they reached the house of Nandan they found the TV playing on full volume and the room was found locked inside and despite repeated knocking Nandan did not open the door. It further stands established that thereafter the child



Dinbandhu entered the house of Nandan through the roof of the neighbour's house after taking permission and putting a ladder after which he opened the latch of the door from inside and thereafter Roop Rekha and Chitra Lekha entered the room of accused Nandan and saw the accused Nandan in an intoxicated condition only in an underwear and baniyan holding the child 'S' who was crying and was totally naked and at the time when the child 'S' was recovered from the house of Nandan with bite marks all over her body with swelling on her lips and was bleeding from her private parts.

The photographs on record established the presence of blood on the floor adjoining the bed where the accused Nandan was found lying with the child on him. The identity of accused Nandan as the person who had committed the crime with the child had been established since the child victim 'S' has correctly identified the accused Nandan both by name and also as *Khushboo kae papa* and as the person who had done *Gandi Cheez* with her and caused pain to her. The child victim 'S' has established that the accused first removed her clothes and thereafter tied her hands and legs with a rope and thereafter compelled her to consume alcohol and eat non-veg/ meat. She has further proved that the accused thereafter had oral sex with her by putting his penis inside her mouth and also disclosed to her mother Roop Rekha that during this process his (Nandan) semen has entered her mouth (*uska paani muh ke dwara*

*andar gaya*). It is also established that the accused Nandan committed rectal/ anal rape with the child prosecutrix who has specifically deposed that the accused put his penis inside her rectum (by referring to as *latrine wali jagah*). It is further established that while committing the crime the accused Nandan extended threats to the child victim to the effect that he would kill her by slitting her throat and throw her in the drain/ nali.

The medical evidence established that the hymen of the child was torn, libia majora was lacerated on both sides, clotted blood was seen and fourchette lacerated proving the use of extensive force upon the victim and the forensic evidence establishes the presence of semen stains on the pajami of the child, vaginal secretions and reddish towel conclusively establishing the commission of rape upon the child. The evidence on record further established that even on previous occasions the accused Nandan had even caught hold of his Bhabhi Chitra Lekha when her husband was not at home but she was able to save her honour and informed her husband about the same, who instead asked her to remain careful in future but concealed this fact from his family members. It is established that on another occasion Nandan caught hold of another girl aged about 12-13 years from his family when she had come to stay at the house of Chitra Lekha along with her family but the said girl was able to resist and save herself after which the family members were made aware of the

conduct of Nandan and they were therefore careful of him though no action was taken.

On the basis of the aforesaid this Court vide a detailed judgment dated 24.1.2012 held that the prosecution has successfully proved the allegations against the accused Nandan of having abducted/ kidnapped the prosecutrix 'S' aged about 6 years from the lawful guardianship of her parents in order that she be forced or seduced to illicit intercourse; having committed oral and vaginal rape upon the prosecutrix; of having committed anal/ rectal rape upon the prosecutrix against the order of nature and also of having criminally intimidated the minor girl 'S'; of having abducted/ kidnapped the prosecutrix 'S' aged about 6 years from the lawful guardianship of her parents in order that she be forced or seduced to illicit intercourse; having committed oral and vaginal rape upon the prosecutrix; of having committed anal/ rectal rape upon the prosecutrix against the order of nature and also of having criminally intimidated the minor girl 'S' and has been held guilty for the offences under Sections 363/366/376(2)(f)/377/506 Indian Penal Code and accordingly convicted.

Heard arguments on the point of sentence. The convict Nandan aged about 30 years is 7<sup>th</sup> class pass and is a driver by profession. He has a family comprising of aged parents, one elder and one younger brother, three married sisters, wife, one daughter and one son. Ld. Counsel for the convict has vehemently argued that

the convict is not a habitual offender and was not earlier convicted in any case. He has pointed out that the wife and two children of the convict are completely dependent upon him for their basic and survival need as well as financial support. It is also submitted that the parents of the convict are not able to even earn their livelihood and it was the convict Nandan who provided them the basic need and hence, in his long absence the parents of the convict would be deprived from medical facilities. He requests that a lenient view be taken against the convict.

On the other hand the Ld. Addl. PP for the State has prayed for strict view upon the convict Nandan keeping in view the fact that the convict is person of perverse thinking.

Coming now to the aspect of quantum of sentence, the Delhi High Court in the case of *Khem Chand Vs. State of Delhi* reported in **2008 (IV) JCC 2497** enumerated the principle factors to be taken into account by the courts while assessing as to what could be the appropriate sentence in a given case. Some of the factors enumerated are (i) Criminal and Crime, (ii) Manner of Commission of offence, (iii) Violence involved, (iv) Whether the offender or accused was in a position of fiduciary, trust or exploited a social or family relationship, (v) State of victim, impact of crime on the victim.

The Hon'ble Supreme Court while considering the question of quantum of sentence in the case of ***State of Rajasthan Vs. Gajender Singh*** reported in **2008 (III) JCC 2061** observed as under:

*“... the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property for the people is an essential functions of the state. It could be achieved through the instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet these challenges. The contagion of lawlessness would undermine social order and lay it in ruins....”*

The Hon'ble Apex Court has time and again stressed upon the need for awarding the punishment for a crime which should not be irrelevant but should be conform to and be consistent with the atrocity and the brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence of the crime and responding to the society's cry for justice against the criminal. (Ref. ***Rajiv Vs. State of Rajasthan*** reported in **1996 (II) SCC 175**).

The Hon'ble Supreme Court has in the judgment of ***State of Andhra Pradesh Vs. Gangula Satya Murthy*** reported in **JT 1996**

(10) SC 550, observed as under:

*“Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity..”*

It has been held by the Hon'ble Supreme Court in the case reported in ***AIR 2000 Supreme Court 1470*** that:

*Socio-economic, status, religion, race caste or creed o the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court.*

It is necessary for the court to keep in mind that the object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. The Courts are expected to operate the sentencing system so as to impose such sentence which reflects the conscience of the society and

sentencing process has to be stern where it should be. (Ref: ***Siddarama and Ors. Vs. State of Karnataka*** reported in **2006 IV AD (Crl.) SC 78**).

The object of sentence is not only required to be reformatory but it should also be punitive, preventive and deterrent. The hon'ble Supreme Court has while considering the sentencing policy in the case of ***Siddarama and Ors. Vs. State of Karnataka*** reported in **2006 IV AD (Crl.) SC 78** has observed that:

*“.....law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his “Law in Changing Society” stated that, “State of criminal law continues to be as it should be a decisive reflection of social unconsciousness of society”. Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the move for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which*

*would enter into the area of consideration.....”*

The Hon'ble Court has further observed that:

*“.....The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion the the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.....”*

*“.....Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crime with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity*



*for any serious crime is through then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment had some very undesirable practice consequences..”*

The offence of rape is barbaric in nature where the victim is ravished like an animal for the fulfillment of desire and lust of another man. As observed by Hon'ble Mr. Justice Arijit Pasayat a murderer destroys the physical frame of the victim whereas the rapist degrades and defiles the soul of a helpless female. As per the official statistics a total number of **568** cases of rape have been reported in Delhi alone in the year 2011 out of which only 2% have been committed by strangers. The figure would be much high but most of the cases are not reported by the victims because of the various reasons such as family pressure, behaviour of the police, the unreasonably long and unjust process and application of law and resulting consequences thereof.

The prosecutrix 'S' in the present case was a soft and vulnerable target. 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 could not even try to escape or express herself and was an easy and vulnerable prey. She must have undergone immense physical pain and agony when the offence was committed. 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 a lifelong trauma to her family. The convict did not stop at this and also had carnal intercourse against the order of nature with the child. The extent of brutality which the convict inflicted upon the child is evident from the medical evidence on record which shows that hymen of the child who is hardly aged about five-six years was torn, *libia majora* was lacerated on both sides, clotted blood was seen and *fourchette* lacerated conclusively establishing use of extensive force upon her.

This case is a glaring example of the growing menace of sexual abuse of young children. Rape is an abominable and ghastly and it worsens and becomes inhuman and barbaric when the victim is a small female child, a five to six years old child, as in the present case who is subjected to unwanted physical contact by a perverted male adult. **Section 376 (2) (f)** Indian Penal Code reads that whoever commits rape on a woman when she is under twelve years of age, shall be punished with **rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine**: Provided that the court may, for adequate

and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Hon'ble Mr. Justice Pradeep Nandrajog in his decision as rendered in **Shree Gopal @ Mani Gopal (Crl. Appeal No. 528/09 decided on 31.8.2009)** examined another important facet pertaining to the sentencing procedure i.e of consideration of *alternative options while referring to the decision* of Hon'ble Supreme Court of India as rendered in the case **Santosh Kumar Satishbhusan Bariyar Vs. State of Maharashtra, JT 2009 (7) SC 249** wherein the Hon'ble Supreme Court of India had observed that a real and abiding concern for the dignity of human life postulates resistance to taking a life through the instrumentality of law. That ought not to be done, save in the *rarest of rare cases, when the alternative option is unquestionably foreclosed.*

The Hon'ble Mr. Justice Pradeep Nandrajog further considered the various alternatives available to him in the light of Section 433 Cr.P.C. and Section 433A Cr.P.C. regarding the meaning of the sentence for imprisonment for life and the power of the executive to grant remission but, not before a period of 14 years of imprisonment. He also referred to various other decisions of Hon'ble Supreme Court of India while classifying the sentence of

imprisonment in two categories i.e the ordinary category whereby the court leaves the exercise of executive power at the discretion of the executive, to be so exercised after 14 years of imprisonment and grant remission; and a higher category, where the Court, in a rare case, but not the rarest of the rare, would clip said benefit being extended by directing that the accused shall undergo an actual sentence for a higher period or even for the remainder of his life. Such kind of cases can be put in the category of rare cases with appropriate direction of not being entitled to the benefit of remission till a fixed term of imprisonment is undergone. Some of the decisions, noted in this regard by the Hon'ble Judge were *Swami Shraddhanand Vs. State of Karnataka* reported in *AIR 2007 (SC) 2531* in paras 60 to 63 of the said decision i.e the decisions reported as *Shri Bhagwan Vs. State of Rajasthan* reported in *2001 (6) SCC 296*, *Parkash Dhawal Khairnar (Patil) Vs. State of Maharashtra* reported in *2002 (2) SCC 35*, *Ram Anoop Singh Vs. State of Bihar* reported in *2002 (6) SCC 686* and *Mohd. Munna Vs. Union of India* reported in *2005 (7) SCC 417*. The convict in the said case was thus sentenced to imprisonment for life with a direction that he will not be considered for being grant of remission till he undergoes an actual sentence of 20 years. It is, therefore, evident that the courts are required to draw a virtual balance sheet listing the mitigating and the aggravating circumstances against each other and then forming

an opinion as to where does the fulcrum rest. The various aggravating circumstances are to be considered in the light of the aforesaid mitigating circumstances which also includes in itself the aspect of young age of the convict and his conduct during the course of trial.

In the present case the child victim 'S' is regularly receiving treatment till date from various hospitals at Rajasthan (where she is presently staying) and her medical record is placed on judicial record as **Ex.X1** (collectively) shows that her resistance level has decreased and she is suffering from recurrent infections. The possibility of the convict having transmitted some infection and disease to the victim while committing the ghastly act cannot be ruled out. The previous incidents regarding the misbehaviour of convict Nandan with other female members of his own family (with Chitra Lekha and another girl child of his family) had been suppressed by the family perhaps to save their own honour. No action, legal or otherwise, was taken against the convict and the only thing which the family did was to distance themselves from the convict. This in my view was the biggest blunder which his family had committed. Having come to know that a person in the family was a sexual maniac who spared none, was it not necessary for the other members of the family particularly the male members to have checked him and to have taken suitable action against him? Had this

been done at the first instance I am sure the present incident could certainly have been prevented. It is the primary duty of each adult member of the family particularly the males to identify, expose and act against such persons exhibiting these kind of sexual tendencies and aberrations. Timely familial and societal intervention can certainly prevent such incidents of dastardly acts against women and children. It is indeed deplorable that for the family of Nandan, his liberty was more crucial to them than the life of the girl child which he destroyed and even during the trial of the case the family of the victim particularly her Mausi Chitra Lekha and child witness Dinbandhu had a feel of the family pressure. We as a nation have failed to protect our daughters at every step. If safety and security of women is a matter of national concern then why is that we as a nation are unable to provide a safe and secured environment for them.

The child victim 'S' has suffered immense mental, physical and psychological pain and so has her family. The sexual assault as narrated by the child and borne out from the medical and forensic evidence is horrifying to the minutest details and the convict before this Court does not deserve any leniency. This being the background, the ghastly, inhuman act of the convict cannot be condoned and a substantive, stern sentence if not imposed upon him would be travesty of justice. The message to be sent by the Court

has to be loud and clear, and that is “*do not mess with a child*” and any person who meddles with the child male or female in any manner shall not be spared *come what may*. In my considered opinion Castration is the most befitting sentence which can be imposed on any pedophile or serial offender (as earlier highlighted by me in the case of *State Vs. Dinesh Yadav, FIR No. 138/2009, PS Swaroop Nagar decided on 30.4.2011*) but the hands of this Court are tied, the Statute not providing for the same since the Indian Legislators are yet to explore this as an alternative to the conventional sentencing. After all, society cannot afford to have live sex bombs, who if let loose are potential threat to the society particularly to women and children. The convict before this court with his track record of a compulsive sex drive requires to be kept out of circulation of society being an obvious threat to women and children including those of his own family. I hereby award the following sentences to the convict **Nandan**:

1. For the offence under **Section 363** read with **366 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **7 years** with fine to the tune of **Rs.5,000/-**. In default of payment of fine the convict shall further undergo **Simple Imprisonment** for a period of **15 days**.

2. For the offence under **Section 376 (2) (f) Indian Penal Code**, the convict is sentenced to **Rigorous imprisonment for Actual Life** and a fine to the tune of **Rs.25,000/-**. **It is clarified that the convict shall not be entitled to any remissions.** In default of payment of fine, he shall undergo simple imprisonment for a further period of **three months**. The entire amount of fine, if paid, be released to the mother of the prosecutrix as compensation under **Section 357 Code of Criminal Procedure** for the benefit of the prosecutrix and shall remain deposited in the form of FDR till the attainment of majority by the prosecutrix without the facility of advance/ loan or withdrawal. However, the mother of the prosecutrix will be entitled to monthly or quarterly interest, as applicable to be used for her welfare.
3. For the offence under **Section 377 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment for Life** with fine to the tune of **Rs.10,000/-**. In default of payment of fine the convict shall further undergo **Simple Imprisonment** for a period of **one month**.
4. For the offence under **Section 506 Indian Penal Code** the convict is sentenced to **Rigorous Imprisonment** for a period of **two years**.



**Benefit of Section 428 Cr.P.C. shall be given to the convict for the period already undergone by him 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.

Coming now to the aspect of compensation to the victim, I may observe that rape of a child not only affects her alone but such an incident leaves a devastating impact on her entire family who equally suffers in silence. The victim at the time of the incident was hardly aged about six years is presently residing at Rajasthan and has not yet recovered and is under constant medical care and receiving treatment and diagnosis from various hospitals at Rajasthan including City Hospital, Mahima Hospital, Bansal Child Clinic, Healthway Hospital, Kailash Hospital, Kailash Healthcare Ltd. (as per the treatment record **Ex.X-1**). It is cases like these which the Ministry of Women and Child development needs to target for **Restorative Justice** so that the medical and legal assistance, professional psychological counselling, shelter and other support is provided to the victim. The Hon'ble Apex Court has time and again observed that the subordinate Courts trying the offences of sexual assault have

the jurisdiction to award the compensation to the victims being an offence against the basic human right and violative of Article 21 of the Constitution of India. It has been so observed by Hon'ble Mr. Justice S. Saghir Ahmed and Justice Kuldip Singh (**Ref: *Bodhisattwa Gautam Vs. Subhra Chakraborty*** reported in ***AIR 1996 SC 922***) that the jurisdiction to pay compensation (interim and final) has to be treated to be a part of the over all jurisdiction of the Courts trying the offences of rape which is an offence against basic human rights as also the Fundamental Rights of Personal Liberty and Life.

Therefore in order to provide ***Restorative and Compensatory Justice*** to the victim who requires constant medical assistance and rehabilitation. I hereby direct the GNCT of Delhi through Principal Secretary (Home) to grant an compensation to the tune of Rs.2,00,000/- (Rs. Two lacs) to the child victim '***S' daughter of Chandan Gupta R/o Village Nimrana, Distt. Alwar, Rajasthan,*** in addition to the medical facilities for her treatment, which amount shall be used for her education, welfare and rehabilitation under the supervision of Deputy Commissioner (North-West), Government of NCT of Delhi [Ref.: ***Hari Kishan & State of Haryana Vs. Sukhbir Singh & Ors.*** reported in ***AIR 1988 SC 2127*** and ***Bodhisattwa Gautam Vs. Subhra Chakraborty*** reported in ***AIR 1996 SC 922***]. I

hereby direct that a copy of this order be sent to the Principal Secretary (Home), GNCT of Delhi and Deputy Commissioner (North-West), Government of NCT of Delhi for information and necessary action under intimation to this Court.

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

File be consigned to Record Room.

Announced in the open court  
Dated: 17.2.2012

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