

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 1st December, 2009.

+ **CRL.A.37/2008**

SATINDER SINGH @ SUNDER Appellant.
Through: Mr.Vinay K. Garg, Advocate.

versus

STATE Respondent
Through: Mr.Manoj Ohri, APP.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. Vide judgment dated 10.12.1007, the petitioner had been convicted under Section 366 of the IPC. Vide order of sentence dated 14.12.2007 he had been sentenced to RI for five years and to pay a fine of Rs.1000/- in default of payment of fine RI for six months.

2. The petitioner as an under trial had undergone incarceration for about three months; after his conviction he remained in judicial custody from 14.12.2007 up to 26.2.2008 on which date he was granted bail; i.e. he had suffered total incarceration of about five months and twelve days.

3. The short point urged before this court is that the testimony of PW-1 does not establish that the petitioner is guilty of the offence under Section 366 of the IPC. Counsel for the petitioner has not assailed the fact that the date of the birth of the petitioner is as of 6.1.1990 has evidenced that on the date of incident i.e. on 30.6.2005 she was aged about 15 years and 5 months. It is also not in dispute that for an offence under Sections 363 and 366 of the IPC the age of consent is 18 years. Admittedly, in this case the prosecutrix was a minor i.e. less than age of 18 years.

4. Attention has been drawn to the testimony of PW-1. Salient deposition inter alia read as under :-

“ It was about one or one and half year back accused wanted to have friendship with me, he brought some gifts for me and after that we became friends. On 30.6.2005 at around 6.35 pm he came to my house, knocked the door and he caught hold of my hand and said that he wants to marry me. I came in his talks. I took the jewellery, money and my clothes and went with the accused. I do not know how much money I took with me. I cannot give the approximate money but the currency notes were of the denomination of Rs.500/- and Rs.100/-. Accused took me to Paharganj in Paras Guest house. He left me outside the Guest House. I alone stayed in the Paras Guest House. Next day he came and gave me a paying Guest room. He wanted to have all the things which I was having but I refused. I came to know that he was having some wrong ideas. Then I realized that I should do something and tried to stay away from him. On 08.7.2005 we were caught by the police at Paharganj outside Decent Hotel. No physical relations were

*established between me and accused but I refused.
Accused had tried to have the physical relations but I
did not allow.”*

5. Admittedly as per this version no rape had been committed upon the prosecutrix. The prosecutrix in her cross-examination had admitted the letters Ex.PW-1/D-1, Ex.PW-1/D-2, Ex.PW-1/D-3 has having been written by her to the petitioner; these are love letters showing the intimacy of the relationship between the petitioner and the prosecutrix. In his statement under Section 313 Cr.P.C., the petitioner has stated that the prosecutrix was all along pressuring him to marry her. She had disclosed that she is a student of engineering; his financial status did not permit him to enter into marriage. The prosecutrix in her cross-examination has also admitted that in her letters she had told the accused that she was a student of engineering.

6. It is in this background that the version of the prsecutrix has to be examined.

7. To make out the offence under Section 366 of the IPC there are two ingredients:

- i. That she was kidnapped or abducted from the custody of her lawful guardian, and
- ii. That she was kidnapped, or abducted with the intention of compelling her to marry any person against her will or in order that she may be forced or seduced to illicit sexual intercourse.

8. In the view of this Court the second ingredient is absent. The petitioner was not taken away from the custody of her lawful guardianship with the intention of forcing a marriage upon her or with the intention that she would be forced or seduced to an illicit sexual relationship. In fact as is the categorical version of PW-1 she did not have any sexual relations with the petitioner. It is also not her version that she could be compelled or forced or pressurized to marry the petitioner. In fact the letters written by the prosecutrix to the petitioner speak otherwise; along with these letters there is a marriage card which had been drawn out by the prosecutrix wherein she has fixed the venue of the marriage with the petitioner; her wedding night and honey moon details have also been depicted. These documents are admittedly penned by her.

9. In these circumstances, it is clear that the second ingredient of Section 366 is not made out.

10. However, this court is of the view that the prosecutrix admittedly being a minor as on the date of the offence and her version that the petitioner had caught hold of her hand and on his statement that he would marry her she came in his talks and accompanied him, would come within the ingredients of her having been 'enticed' from the custody of her lawful guardianship. She had gone with the accused only on his promise that he would marry her and the prosecutrix i.e. the PW-1 is enamored by his

talk and false promise went with him. She was admittedly a minor on that date. Offence under Section 363 stands established.

11. For the offence under Section 363 of the IPC, the penalty is sentence which may extend to seven years and fine.

12. The petitioner is stated to be a married man; he has a got a family and children as on date. Offence is dated more than four years ago from today; petitioner has no criminal antecedents; he was a first time offender.

13. The nature of the offence also shows that it was a love relationship which the parties had entered into which could not fructify and culminate into a legal relationship. Petitioner has already suffered incarceration of about five months and twelve days. In these circumstances, it would be just and fair if the petitioner is sentenced to the sentence already undergone by him. It is ordered accordingly.

14. Petition is disposed of.

(INDERMEET KAUR)
JUDGE

1st December, 2009
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