

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

Date of Reserve: 28th July, 2010
Date of Order: 18th August, 2010

+ Crl. A. No. 715 of 2008

%

18.08.2010

KULWANT SINGH

..... Appellant

Through: Mr. Vinod Kr. Sharma, Adv.

versus

STATE (GOVT. OF N.C.T. OF DLEHI)

..... Respondent

Through: Mr. O.P. Saxena, APP

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This appeal has been preferred by the appellant who has been convicted by the trial court under Section 363, 366 and 376 IPC and sentenced to undergo RI for 7 years under Section 376 IPC with a fine of Rs. 10,000/-, RI for 5 years under Section 366 IPC and a fine of Rs. 5,000/- and RI for 3 years under Section 363 IPC and a fine of Rs. 5,000/-.

2. Brief facts relevant for the purpose of deciding this appeal are that on 21st December, 2002, mother of prosecutrix lodged the report Ex. PW2/A that her daughter, aged around 14 years had left the house on 18th December,

2002 and had not returned back. The appellant used to visit her house and from the date her daughter was missing, appellant was also not at this house and she suspected that the appellant had enticed away her daughter.

3. The appellant and the prosecutrix had eloped together from their houses. The appellant was aged 18 years when the incident took place and the prosecutrix was aged around 16 years at the time of incident. They lived at a village in Punjab for about a month and half and it seems that the police was putting pressure on the parents of the appellant with the result that the appellant and prosecutrix came to Delhi. The appellant and the prosecutrix were taken into custody by police at Delhi. Though the story of the police is that they were walking on the road and were pointed out by the mother of appellant but from the perusal of statement of prosecutrix, it is apparent that sister of the appellant had gone to Punjab and brought them back to Delhi. After the appellant and prosecutrix were taken into custody by the police, prosecutrix was produced for her medical examination at Sanjay Gandhi Memorial Hospital, Mangol Puri on 5th February, 2003 at around 12.30 am. She gave history to the Doctor, recorded in MLC Ex. PW2/A, that she had eloped with a boy, she had married him and subsequently had physical contact with him. The boy was also produced for his medical examination on the same day and his MLC Ex. PW6/A was prepared. The age of the girl, as given to the Doctor was 17 years, and the age of the boy was 18 years. The girl

was later on produced before the Metropolitan Magistrate on 6th February, 2003. The order dated 6th February, 2003 of learned MM shows that the girl did not want to go with her mother but the learned MM observing that the girl was minor, gave custody of the girl to her mother, vide his order dated 6th February, 2003. The prosecutrix was produced for her statement under Section 164 Cr. P.C. before the MM on 21st February, 2003. She made a statement before the learned MM under Section 164 Cr.P.C. after being brought from the custody of her mother, and exonerated the appellant completely. She denied that she had gone with the appellant at all and took a stand that during this period she had lived with her sister in UP.

4. During trial, however, the prosecutrix changed the story and a usual story, which is unique to Delhi Police, given in every such case, was put forward that the accused called her at his house, offered her tea and something was mixed in the tea and thereafter she became unconscious and she was taken to Punjab in unconscious state, she regain consciousness in Punjab. This story given by the prosecutrix is not believable in view of her statement under Section 164 Cr.P.C. made before the Magistrate. This story is belied by her testimony in her cross examination wherein she stated that they (she and the boy) had gone to Punjab at about 12 noon on the day of incident. It is obvious that she had left the house at 11 am as per her mother's report and thereafter both of them had gone to Punjab. Her plea that she became

unconscious was a patently false plea as is apparent from the sequence of events and the documents proved on record. During cross examination she was shown photographs of her with the boy, taken when they were in a village in Punjab. She admitted the photographs, but, she denied that she had married the accused in a temple. She admitted that all along i.e. for a period of more than one and a half month, when she lived with accused, she raised no alarm at any point of time.

5. The learned ASJ had considered that the age of prosecutrix was most important aspect and in view of the school leaving certificate showing that she was born on 2nd July, 1988, the learned ASJ came to conclusion that the age of prosecutrix, on the date of incident, was 14 years and a half year, thus, she being below 16 years of age and offences under Section 363, 366 and 376 IPC were made out against the accused.

6. The mother of prosecutrix, while appearing as PW-3, has stated that she did not remember what the date of birth of her daughter was. She gave her age as 14 years. PW-6 Dr. Naveen Bhatt, who is an independent witness, during his testimony, stated that the prosecutrix aged 17 years was brought to casualty for her medical examination. He stated on the basis of radiological opinion the boney age of the girl was between 14 and 16 years. PW-8 was Head Master of Nigam School, Sultan Puri, where prosecutrix had studied up

to 4th class, deposed that as per school record, the date of birth was 2nd July, 1988. He further deposed that this DOB was recorded not on the basis of any birth certificate but on the basis of another school leaving certificate issued by MCD School. Thus, it is apparent that date of birth certificate or birth certificate of the prosecutrix was not available either with parents or with the school and the date of birth of the prosecutrix was given on the basis of rough idea. The mother of the prosecutrix, who gave birth to her, failed to give date of birth of the prosecutrix. It is apparent that at the time of admission of prosecutrix in school, an arbitrary date of birth was given just for her admission. Her actual date of birth was not known. Mother of prosecutrix gave her age as 14 years on the date of incident, whereas, the prosecutrix herself gave her age as 17 years when she was produced before the Doctor. The radiologist gave her age between 14 and 16 years. Under these circumstances, I consider that the conclusion drawn by learned ASJ that the girl was definitely below 16 years was not justified and the benefit of doubt should have been given to the accused. The girl was mature enough and had taken a decision to run away with a boy of almost of her own age. The appellant, at the time of incident, was only 18 years old and if the prosecutrix around 17 years of age had run away with him, I do not consider that it was a case that appellant should have been convicted under Section 363, 366 and 376 IPC.

7. I therefore, accept this appeal. The conviction of the appellant is hereby set aside. The appellant be set free forthwith.

A copy of order be sent to Jail Superintendent forthwith.

August 18, 2010
acm

SHIV NARAYAN DHINGRA, J.