

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

+ **Crl. Appeal No. 707/2002 & Crl.M.B. 773/2011**

% Reserved on: 29th November, 2011

Decided on: 13th December, 2011

RAM SINGH @ KARAN Appellant

Through: Mr. Bhupesh Narula, Advocate

versus

STATE N.C.T. OF DELHI Respondents

Through: Mr. Mukesh Gupta, APP for State.

AND

+ **Crl. Appeal No. 367/2002**

BHAGWAN DASS @ BABLU Appellant

Through: Mr. Permod Bajaj, Advocate

versus

STATE OF DELHI Respondents

Through: Mr. Mukesh Gupta, APP for State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals, the Appellants lay a challenge to the judgment dated 28th April, 2002 convicting the Appellant Ram Singh for offence punishable under Section 376 IPC and the Appellant Bhagwan Dass for offence punishable under Sections 376/109 IPC.

2. By the order on sentence, the Appellants Ram Singh and Bhagwan Dass have been directed to undergo rigorous imprisonment for a period of

seven years and a fine of Rs.500/- each and in default of payment of fine to further undergo simple imprisonment for one month.

3. Learned counsel for the Appellants contends that though the Appellant Ram Singh was charged for the offences punishable under Sections 366/376 IPC and the Appellant Bhagwan Dass for offences punishable under Sections 366/34 and 376/109 IPC, however Appellant Ram Singh has been convicted only for offence punishable under Section 376 IPC and Appellant Bhagwan Dass for abetment thereof. The learned Trial Court has held that the prosecutrix was a consenting party by upholding the defence of the Appellants. However, in view of the School Leaving Certificate it came to the conclusion that the prosecutrix was below 16 years of age and, thus, her consent was immaterial.

4. Learned counsel for the Appellants submits that as per the ossification test the age of the prosecutrix was opined to be 16 to 18 years and in view thereof, the Appellants were entitled to be acquitted of the charges framed. The date of birth, as entered in the School Leaving Certificate, was supported by no contemporaneous document. In the absence of reliability of the School Leaving Certificate, the medical evidence, i.e., the report of the bone ossification test should have prevailed thus entailing the benefit to the Appellants. Further, in view of the fact that the Trial Court itself came to the conclusion that the prosecutrix was a consented party, the sentence awarded to the Appellants was on the higher side.

5. I have heard learned counsel for the parties.

6. Briefly, the case of the prosecution is that FIR No.511/1997 was lodged for offences under Sections 363/366/376 IPC at PS Sarojini Nagar on

complaint filed by Charan Singh, the father of the prosecutrix, who alleged that on 25th August, 1997, at about 8:30 p.m. his daughter “u” aged about 15 to 16 years had gone to Ram Mandir, Safdarjang Enclave to celebrate Janmashtmi but had not returned back. He apprehended that accused Ram Singh @ Karan and Bhagwan Dass had kidnapped his daughter. On 28.8.1997, both the appellants along with prosecutrix were apprehended near Hanuman Mandir. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she stated that she was born on 20th March 1982. That year i.e. in 1997, she failed in the 10th standard because she was weak in Mathematics, since then she had stopped going to school. Her mother sent her to her uncle’s house at Safdarjang Enclave. Her aunt’s daughter was also of her age. On the day of Janmashtmi, both of them went with their friends to see Ram Mandir. When she went to the toilet, she met two boys whom she knew since earlier as they were neighbours in Sultanpuri. She named them as Ram Singh @ Karan and Bhagwan Dass @ Bablu. They stated that her parents were standing on the other side and were calling her as her sister was unwell. She went with them. There she found two other unknown boys standing near a taxi. The two boys put a handkerchief on her mouth, made her sit in the taxi and took her. When she got up in the morning, she found that she was in a plot which had a dilapidated room. There Ram Singh gave beatings to her and then raped her. When Ram Singh was doing this Bhagwan Dass @ Babloo was standing outside guarding the place. She could not make noise as her mouth was shut with a chunni. Thereafter, the two of them went away and came there in the evening but did not speak to her. Next day morning they planned to take her at a Mandir where the Police and her mother rescued her.

7. The prosecutrix has supported her version and so have her parents PW3 Rajwati and PW4 Charan Singh. However, prosecutrix was confronted by the letters written by her to Ram Singh which expressed her love towards him. In her statement in the Court, she also stated that she went to different places in a rickshaw and on foot with the Appellants, however she did not raise any hue and cry.

8. In view of the letters of the prosecutrix expressing her love towards the Appellant Ram Singh and the conduct of the prosecutrix, the learned Trial Court came to the conclusion that the prosecutrix was a consenting party in going with the appellants. This finding of the learned Trial Court is not incorrect on the basis of evidence on record.

9. However, the core issue is the age of the prosecutrix. The learned Trial Court, on the basis of the School Leaving certificate came to the conclusion that the date of birth of the prosecutrix was 20th March, 1982 and thus on the date of incident i.e. 25th August, 1997 she was 15 years 5 months and 5 days old. I find no reason to disagree with the learned Trial Court on this count. The School Leaving Certificate of the prosecutrix from Government Middle School, P- Block, Sultanpuri, has been proved as EXPW10/A by PW10 Ravinder Singh Mann. Even the school record, on the basis of which the School Leaving Certificate was prepared, had been produced. As per the school record, the date of birth of the prosecutrix was recorded as 20th March, 1982. The prosecutrix was admitted to the school on 2nd April, 1986 on the basis of the School Leaving Certificate issued by the previous school attended by the prosecutrix. Thus, there is no reason not to rely on the certificate and rely on the bone ossification test which gives only

a rough estimate of age. Further, even as per the bone ossification test, the prosecutrix was about 16 years thus corroborating the age of the prosecutrix in the School Leaving Certificate. I find no infirmity in the impugned judgment convicting the appellants for the offences punishable under Section 376 and 376/109 IPC respectively.

10. As regards the sentence, the prosecutrix was just below 16 years. For special reasons to be recorded, the Court can award a sentence less than the minimum prescribed period of 7 years. In view of the fact that from the evidence adduced, the Appellants have been able to successfully show that the prosecutrix was in love with the Appellant Ram Singh @ Karan and had gone of her own free will thus, it is a fit case to reduce the sentence of the Appellant below 7 years.

11. The Appellant Ram Singh has been convicted for offence punishable under Section 376 IPC. He has undergone a sentence of Rigorous Imprisonment for about 5 years 8 months. The Appellant Bhagwan Dass has been convicted for offence punishable under Section 376/109 IPC. He has undergone Rigorous Imprisonment for about 3 years. In view the aforesaid discussion, the sentence of the Appellants are modified to the period already undergone. The appellants are in custody. The Superintendent, Tihar Jail, is directed to release the Appellants forthwith, if not required in any other case.

12. The appeals and application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

DECEMBER 13, 2011
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