

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. L.P. NO. 115/2011

% Judgment decided on: 1st March, 2011

STATE PETITIONER

Through: Mr. M.P. Singh, APP for the
State

Versus

SHRI SANJEEV BHEDAR RESPONDENT

Through: None

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

Crl. M.A. No. 2545/2011 (condonation of delay)

For the reasons mentioned in the application, delay of 140 days in filing of this petition is condoned. Application disposed of.

Crl. M.A. No. 2544/2011 (exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

Crl. L.P. No. 115/2011

1. Petitioner seeks leave to appeal against the judgment dated 5th June, 2010 passed by the Trial Court, whereby respondent has been acquitted of the charges under Sections 363/366/376 IPC.

2. As per the prosecution, respondent had taken away the prosecutrix aged about 15 years with him, after enticing her, to his village in the State of Orissa on 26th August, 2008. He kept the prosecutrix with him from 26th August, 2008 till 7th September, 2008 when he was apprehended by the police. During this period, he had sexual intercourse with the prosecutrix without her consent.

3. During the trial, prosecutrix was examined as PW2. It may be noted here that during the investigation statement of the prosecutrix had been recorded by the Metropolitan Magistrate, Delhi under Section 164 Cr.P.C. (Ex. PW2/C). She was also produced before a doctor for her medical examination; however, she declined for her internal check up. Father of the prosecutrix was examined as PW1. Other witnesses, who were joined with the investigation, were also examined.

4. After meticulously scrutinizing the evidence on record, Trial Court has returned a categorical finding that the prosecutrix was not a trustworthy, reliable and credible witness in view of inconsistent stand taken by her at different stages.

Thus, offence of rape had remained unproved. Besides that, from her testimony, it was apparent that she had willingly accompanied the respondent to his village and stayed there with him from 26th August, 2008 till 7th September, 2008. Thus, respondent could not have been punished for the offence under Section 363 IPC. Reliance had been placed on **S. Varadarajan vs. State of Madras, AIR 1965 SC 942**. As regards offence under Section 366 IPC was concerned, Trial Court was of the view that no evidence was there to show that respondent had taken away the prosecutrix with him, with a view to sexually exploit her, thus, offence under Section 366 IPC was also not made out.

5. It is well settled that an order of acquittal should not be interfered with lightly or merely because one other view is possible. With the passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened and the findings of the Trial Court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons. The High Court would not be justified to interfere with an order of acquittal merely because it feels that sitting as a Trial Court it would have proceeded to record a conviction. This is no more *res integra* that unless the conclusions of the court drawn on the evidence on record are unreasonable, perverse or unsustainable, the High Court should not interfere with an

order of acquittal. If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

6. In the present case, in the backdrop of above settled legal position, I do not find the view taken by Trial Court to be perverse or suffering from any manifest glaring illegality. In her statement under Section 164 Cr.P.C., prosecutrix had not leveled any specific allegation of rape. In her examination-in-chief, prosecutrix had stated that respondent did *galat kaam* despite her refusal, against her wishes and consent; and by *galat kaam* she meant that he had committed rape on her. However, in her cross-examination she stated that she was not aware as to what had happened with her. She had a feeling that something had happened to her. After the prosecutrix was recovered from Orissa, she was taken to hospital for her medical examination on 10th September, 2008. However, prosecutrix refused for her internal medical examination. There is no medical evidence to support the offence of rape. In view of this, it cannot be said that the view taken by the Trial Court that in the absence of any medical evidence to corroborate the shaky testimony of the prosecutrix, respondent was entitled to benefit of doubt with regard to the offence of rape, was perverse. Prosecutrix has deposed that respondent had been residing in front of her house. She came in contact

with him; he told her to accompany him to Orissa on 26th August, 2008. She went from Delhi to Orissa with the respondent. She reached from Delhi to Orissa after three days. During this period, she travelled with the respondent in auto rickshaw, buses and trains. Thereafter, she stayed with the respondent in his village for about a week. Prosecutrix was between 15/16 years of age. In my view she had reached the age of discretion. In spite of this, prosecutrix had meekly accompanied the respondent without raising any alarm. She did not make any effort to escape. She did not complain to anyone while travelling from Delhi to Orissa that respondent had been taking her away against her wishes. Perusal of her overall testimony shows that she had willingly accompanied the respondent from Delhi to Orissa and stayed there with him.

7. In S. Varadarajan's case (supra), Supreme Court has held that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of

inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

8. In the facts of this case, the view taken by the Trial Court that no offence under Sections 363/366/376 IPC is made out, cannot be said to be perverse or suffering from any manifest error.

9. For the foregoing reasons, in my view, petitioner has failed to make out an arguable case in favour of grant of leave to appeal. Petition is dismissed being devoid of merits.

A.K. PATHAK, J.

MARCH 01, 2011

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