

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

RESERVED ON : February 20, 2013

DECIDED ON : February 27, 2013

+ CRL.A.150/2010 & Crl.M.A.No.8174/2011

PRADEEP @ SHERU @ SHER SINGH Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP for the State.
ASI Yashbir Singh, PS South
Rohini, Delhi.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellant Pradeep @ Sheru @ Sher Singh impugns judgment dated 11.09.2009 and order on sentence dated 24.09.2009 in Sessions Case No.85/2009 arising out of FIR No.903/2007 registered at Police Station Rohini by which he was held guilty for committing offences punishable under Sections 363/366/376 IPC and sentenced to undergo RI for ten years with total fine of ₹9,000/-.

2. The allegations against the accused were that on 28.09.2007 from House No.46, MTNL Colony, Sector 3, Rohini, he kidnapped

prosecutrix 'X' (assumed name) and committed rape upon her for one month during her stay with him at Bateshwar. Statement of the prosecutrix 'X' was recorded under Section 164 Cr.P.C. She was medically examined. Her school records depicting her date of birth as 1st April, 1993 were collected. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, charge-sheet was submitted against the accused. He was duly charged and brought to trial. The prosecution examined 13 witnesses. In his statement under Section 313 Cr.P.C. the accused pleaded false implication and alleged that a quarrel had taken place with the prosecutrix's brother and he was implicated in this case. On appreciating the evidence and considering the rival submissions of the parties, the Trial Court, by the impugned judgment convicted the appellant and sentenced him. Being aggrieved, the appellant has preferred the present appeal.

3. Learned counsel for the appellant alleged that the Trial Court did not appreciate the evidence in its true perspective and based its conviction on the sole testimony of the prosecutrix without seeking independent corroboration. The prosecutrix 'X' was major on the day of incident and had accompanied the appellant with her free will. She was a consenting party throughout. She had remained in the company of the

appellant for about one month and never raised any alarm. The school certificate showing the age of the prosecutrix as 1st April, 1993 is not an authenticated document. It was not based upon any birth certificate. The Trial Court was not justified to conclude that 'X' was below 16 years of age. There was no occasion for the prosecutrix to study in a school at Chander Vihar, East Delhi far away from her residence at Rohini. The school certificate does not show the gap of two years as admitted by her father. In the alternative, it was prayed that lenient view be taken as the appellant has already remained in custody for more than five years. Number of documents showing his conduct and behavior in the jail were produced. Learned Additional Public Prosecutor urged that there is no reason to discard the testimony of the child victim. The conviction can be based upon the sole testimony of the prosecutrix and it needs no corroboration. The prosecutrix was below 16 years of age on the day of occurrence. He, however, had no objection if considering the conduct of the accused, the order on sentence was modified.

4. I have considered the submissions of the parties and have examined the record. Undoubtedly, the prosecutrix willingly accompanied the accused on 28.09.2007 when she went to a shop for purchasing household articles. She was not happy with the conduct and

behavior of her step- mother. She told the accused about harassment caused to her. It is also not in dispute that the prosecutrix remained with the accused for a month before her recovery by the police. Her statement under Section 164 Cr.P.C. was recorded. She informed the Metropolitan Magistrate that she had accompanied the accused on 28.09.2007. After hearing her miserable condition, he promised to marry her. She had no good relations with her step-mother and wanted to get rid of her. She also agreed to marry the accused. She further stated that she remained for about one month with the accused but he did not marry her. She further stated that the accused established physical relations with her continuously during her stay with him for one month. When she insisted to marry her, the accused left and went away. In her statement in the court, as PW-1, she deposed that she accompanied the accused on his promise to marry her. On 28.09.2007, the accused took her to a jhuggi and committed rape upon her against her wishes. The accused had physical relations with her every day till she remained with him. In the cross-examination, she admitted that she used to go to the toilet to answer the call of nature which was situated outside the jhuggi. The toilet was about 10 ft.away from the jhuggi. She did not inform any person about the incident. She reiterated that she attended Nagar Nigam Prathamic

Vidyalya Chander Vihar in first standard. There was no gap in her studies. She failed once in sixth standard.

5. Scrutinizing the testimony of the prosecutrix it reveals that she was a consenting party when she accompanied the accused to get rid of her step-mother on his promise to marry her. It further reveals that physical relationship with the prosecutrix were with her consent as she was under the impression that the accused would marry her. She did not raise hue and cry at any stage during her stay for one month with the accused. She did not suffer any injuries on her body. She did not try to contact her parents. She remained in the company of the accused without any grievance.

6. Age of the prosecutrix is crucial to determine the guilt of the accused. From the inception, prosecution case is that 'X' was below 16 years of age and her consent to have physical relationship with the accused was immaterial. The First Information Report (Ex.PW2/A) was lodged by PW-2 (Ram Dass), 'X's father in which the date of birth of the prosecutrix was described as 13 years. 'X' was medically examined and her MLC (Ex.PW-4/A) records her age as 13 and a half years. Her school record was collected and proved by PW-6 (Ms.Santosh, Principal of MCD Primary School, Chander Vihar, Delhi). She deposed that as per

record, 'X' was admitted in their school in class 1 on 6th July, 1999 vide Srl.No.1590. She left the school on 31.03.2004 after passing Class V. As per the record, the date of birth of the prosecutrix 'X' was 01.04.1993. She brought the original register, the copy of which is Ex.PW6/A. She also brought the original admission form by which 'X' was admitted in the school which is Ex.PW-6/B. She was not cross-examined by the accused. The accused did not suspect genuineness of the documents. No suggestion was put to the witness that the prosecutrix was more than 18 years of age on the day of incident or that her date of birth i.e. 01.04.1993 was incorrect. The prosecutrix in her deposition claimed her date of birth as 01.04.1993. She claimed that she was 13 and half years old at the time of examination on 03.11.2008. Again in the cross-examination, no other date of birth was suggested to her and no suggestion was put that she was more than 16 years on the day of incident. PW-2 (Ram Dass), her father, claimed that date of birth of 'X' was 01.04.1993. In the cross-examination, he stated that he was married in 1986-87 or 1987-88. First child was born to him after 3-4 years of marriage. There was gap of two years in the birth of elder son and 'X'. Again nothing was suggested to him that how prosecutrix was aged more than twenty years as alleged. I have no reasons to disbelieve the date of birth recorded in the school

records. This date of birth was recorded much prior to the happening of the incident. The parents of the prosecutrix did not anticipate that any such incident would happen in future. Date of birth recorded as 01.04.1993 cannot be doubted without any reasonable ground. Apparently, the prosecutrix was below 16 years of age on the day of occurrence and her consent to have physical relations with the accused was no consent in the eye of law. The minor child had consented to have physical relations on the false promise of the accused to marry her. 'X' was fed up with the conduct and harassment of her step-mother and the accused exploited the situation and established relations with her without performing marriage. He kept the prosecutrix in his custody for a month and did not bother to inform her parents who had lodged missing report to find out her whereabouts.

7. In his statement under Section 313 Cr.P.C. for the first time the accused came up with the plea that he was falsely implicated due to a quarrel with 'X's brother. He did not elaborate as to when such quarrel took place and if so on what account. For a trivial matter, the parents of the prosecutrix are not expected to level false allegation of rape with their own daughter to cast a stigma on her. The accused did not put any such defence to PW-1 and PW-2 in their cross-examination. Statement of the

prosecutrix is in consonance with medical evidence. She was medically examined on 16.11.2007 after her recovery at Baba Saheb Ambedkar Hospital, Rohini. In the MLC, hymen was found ruptured. There is no conflict between the oral and medical evidence. Minor contradictions and discrepancies highlighted by the counsel are not glaring to discard the otherwise cogent and reliable testimony of the prosecutrix. Finding on conviction are based upon fair appraisal of the evidence and needs no interference. Regarding order on sentence, the appellant was sentenced to undergo RI for 10 years with fine. Nominal roll reveals that the appellant has already undergone more than five years incarceration. Counsel for the appellant has placed on record Certificate of Recognition awarded to the appellant in appreciation of commendable work in 'Carpentry Unit' for the year 2012. He passed competency test in 'Basic Welding (Gas) (FAB-101) under sector Fabrication (FAB)' assessed by CII, Gurgaon on 06.06.2010. He was awarded National Certificate in Modular Employable Skills. He was also awarded certificate by Vocational Skill Training Centre for computer course. He joined the National Institute of Open Schooling and passed Secondary School Examination of National Institute of Open Schooling held in April, 2012. The accused is not a previous convict and is not involved in any other criminal case. The prosecutrix

had accompanied him with her free consent. She was a consenting party throughout. Only fault of the appellant is that he did not fulfill the promise of marry and ravished the prosecutrix who was below 16 years of age and exploited her misery when she disclosed her pitiable condition at the hands of her step-mother. The accused was aged about 25 years on the day of incident and was aware of the consequences of his 'act' to have physical relations with the minor girl.

8. Considering all these facts and circumstances of the case and the mitigating circumstances referred above, the order on sentence is modified and appellant is sentenced to undergo RI for 7 years in all with fine of ₹2,000/- in all and failing to pay the fine, he shall undergo SI for one month.

9. The appeal stands disposed of in the above terms. Pending application also stands disposed of.

10. Copy of the order be sent to the appellant through Superintendent, Jail.

(S.P.GARG)
JUDGE

February 27, 2013/sa