

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

RESERVED ON : 2nd FEBRUARY, 2016

DECIDED ON : 15th FEBRUARY, 2016

+ CRL.A.700/2006

RAKESH RANJAN VERMA Appellant

Through : Mr.Mohit K.Shah, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through : Mr.Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 01.08.2006 of learned Addl. Sessions Judge in Sessions Case No.24/2006 arising out of FIR No.454/2001 PS Kamla Market by which the appellant – Rakesh Ranjan Verma was convicted for committing offences under Sections 376/342 IPC, the present appeal has been filed by him. By an order dated 04.08.2006, he was sentenced to undergo RI for seven years with fine ₹10,000/- under Section 376 IPC and RI for one year with fine ₹1,000/- under Section 342 IPC. Both the sentences were to operate concurrently.

2. The case in brief as stated in the charge-sheet was that on the night intervening 16/17.12.2001 at about 03.00 a.m. the appellant committed rape upon the prosecutrix 'X' (changed name) after wrongfully confining her at his jhuggi No.C-51/R-126, Thomson Road, Railway Colony, Delhi. The police machinery was set in motion on 18.12.2001 and the Investigating Officer lodged First Information Report after recording victim's statement (Ex.PW-1/A). 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. The prosecution produced thirteen witnesses to prove its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. Sushil Kumar Sahni appeared in defence as DW-1. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material

contradictions and infirmities in the statements of the witnesses were overlooked without cogent reasons. Initially, in her complaint (Ex.PW-1/A), the victim had not alleged if she was subjected to rape. Later on, she deviated from her earlier version and Section 376 IPC was added in the FIR. 'X' even had attempted to implicate CRPF officials to have ravished her and the victim's father had taken her to the 'camp' where she was asked to identify the perpetrator of crime. The FSL report (Ex.PW-3/A) does not implicate the appellant as no sperms were seen in vaginal smear. It was emphasized that 'X' was above 16 year of age on the day of incident and as per the ossification report her age was in between 17 – 18 years. 'X' had alleged that at the time of commission of rape, string of her salwar was broken. However, when the 'salwar' was produced before the Court, the string was found intact. 'X' did not suffer any injury on her private organs. The appellant had got no opportunity to make submissions before the Trial Court at the time of final disposal due to absence of his lawyer. Learned Addl. Public Prosecutor urged that 'X' was below 16 years of age as her date of birth was 12.10.1986 as proved by PW-10 (Harish Chander). 'X' had no ulterior considerations to falsely implicate the appellant.

4. Admitted position is that 'X' and the appellant were acquainted with each other before the occurrence. The appellant lived in the neighbouring jhuggi in the same locality. The occurrence took place on the night intervening 16/17.12.2001 after 'X' had gone at around 03.00 a.m. to answer call of nature outside her jhuggi. It is alleged that the appellant dragged her to his jhuggi and after wrongfully confining her committed rape upon her against her wishes. On perusal of the statements of the various witnesses examined by the prosecution, it can be inferred with certainty that the physical relations between 'X' and the appellant (if any) in the jhuggi were consensual. After 'X' had left her jhuggi at around 03.00 a.m. purportedly to answer the call of nature, she did not return till 05.00 a.m. Her family members finding her missing from the jhuggi went here and there to search her. At around 05.00 a.m., she was seen coming from the appellant's jhuggi. At that time, she did not exhibit any abnormal behaviour. She even did not divulge true facts to her parents. She attempted to mislead them and accused CRPF officials to be the perpetrators of the crime of rape. Her father even took her to the CRPF camp and apprised the senior officers. 'X' was asked to identify the culprit but she could not do so. Later on, she revealed that she had misled her family members due to fear and because of the threats extended by the

appellant. It has further come on record that for her visit to the appellant's jhuggi and have physical relations with him, she was even beaten by her family members. At the time of her medical examination, she had informed the examining doctor about the beatings given by her father by an iron rod after the rape incident. This fact finds mention in the alleged history recorded in MLC (Ex.PW-5/A). Abrasions and bruises were present on interior aspect of left leg, right elbow and left arm. In her initial version (Ex.PW-1/A), the victim tried to save the appellant and did not level allegations of commission of rape. She merely informed that the appellant had attempted to outrage her modesty and attempted to commit rape upon her by opening string of her salwar which she did not allow. She further disclosed that after great difficulty, she was able to save herself and come back running to her jhuggi. She did not disclose anything to her parents due to shame. This version is in contradiction to the one given by her father PW-9 (Mishri Lal) wherein he stated that when they were searching 'X' after finding her missing at home, she was seen coming from the appellant's jhuggi. In her 164 Cr.P.C. statement recorded on 20.12.2001, the victim gave detailed account as to how and under what circumstances, rape was committed upon her. FIR was lodged on 18.12.2001. The delay in lodging the FIR has remained unexplained.

5. 'X' remained in the appellant's company in his jhuggi from 03.00 a.m. to 05.00 a.m. At no stage, she raised alarm to protest her alleged kidnapping and rape. Even after she exited from the jhuggi after the incident, she did not raise hue and cry. She maintained silence and attempted to divert the blame on CRPF officials on being caught hold by her parents. She was aware that her family members were in the jhuggi and would wait for her arrival after answering the call of nature, particularly when before going to answer the call of nature, she had informed her mother. 'X' had left the house at odd hours during winter night. It is highly unbelievable that without any prior information, the appellant would anticipate her arrival outside the jhuggi to carry-out his plan. Physical relations took place between the two in the appellant's jhuggi. Nothing has emerged if any resistance was offered by the victim at that time. She did not suffer any struggle / violence marks on her body. No external injuries were found on her body including private parts to infer forcible rape. Under these circumstances, 'X' was seemingly a consenting party to the coitus.

6. The victim's age becomes crucial to ascertain the appellant's guilt. From the very inception, it was the prosecution case that 'X' was around 15 years of age on the day of incident. Complaint (Ex.PW-13/A);

164 Cr.P.C. statement (Ex.PW-1/2) and MLC (Ex.PW-7/A), all described her age as 15 years. PW-9 (Mishri Lal), victim's father in his deposition before the Court claimed that her daughter was aged around 15 years on the day of occurrence. He produced original birth certificate issued by Sub-Registrar of Births and Deaths, City Zone, MCD (Mark 'A'). PW-10 (Harish Chander), Sub-Registrar, Births and Deaths, MCD, Minto Road, Delhi, brought the summoned record as per which at Sl.No.3403 birth of a female child at Girdhari Lal Memorial Hospital (GLM) was recorded on 12.10.1986. It bears the father's name of the female child as Mishri Lal and mother's name as Radha, both resident of H-112/F, Railway Quarters, Thomson Road, Delhi. He also proved the photocopy of the entry (Ex.PW-10/A) and the certificate of birth (Ex.PW-10/B) issued on the said basis. His testimony remained unchallenged. The authenticity and genuineness of these documents was not suspected in the cross-examination. These documents came into existence much before the occurrence. At that time, the victim's parents had not anticipated such an unfortunate incident to happen to manipulate her date of birth. It is true that in ossification report (Ex.PW-8/A), her age has been determined to be in between 17 – 18 years. However, in view of the availability of the cogent document i.e. birth certificate, the opinion recorded in the

ossification test which is an estimate cannot prevail. The appellant did not examine any witness to prove if the prosecutrix was above 16 years of age on the day of incident. Since 'X' was below 16 years of age on the day when physical relations took place between the two, her 'consent' was of no relevance.

7. Minor discrepancies and contradictions highlighted by the appellant's counsel are inconsequential. The appellant did not deny his presence in the jhuggi at the relevant time; he did not specifically contradict the victim's statement of her visit to the jhuggi at that time. Contrary to that, suggestion was put to 'X' in the cross-examination that she had removed her clothes on her own before the appellant in the jhuggi. 'X' had no valid reasons to falsely implicate the appellant to have physical relations with her. She rather attempted to save him and suffered injuries at the hands of her parents. It shows how immature and innocent she was. Conviction under Section 376 IPC can't be faulted and is affirmed. Conviction and sentence recorded under Section 342 IPC is set aside as 'X' was a willing party and was not confined forcibly inside the jhuggi. She had voluntarily gone there on the pretext to answer the call of nature at around 03.00 a.m.

8. Prayer has been made to modify the sentence order as the appellant has already suffered custody for about two years and is not a previous convict; he was aged around 21 years on the day of incident. Perusal of the file reveals that the appellant was sentenced to undergo RI for seven years under Section 376 IPC. After he remained in custody for around two years, his substantive sentence was suspended by this Court on 26.03.2008. Nothing has emerged if after release on bail, he ever indulged in any such criminal activity or misused the liberty. He has suffered the ordeal of trial / appeal for about fifteen years. 'X', as observed, was a consenting party and physical relations between the two were with consent. Considering all these circumstances, there exist adequate and sufficient reasons to take lenient view and Sentence Order is modified to the extent that the substantive sentence shall be three years instead of seven years under Section 376 IPC. The appellant shall, however, pay ₹40,000/- as compensation to the prosecutrix which shall be deposited before the Trial Court within two weeks. It shall be released to the prosecutrix after due notice.

9. The appeal stands disposed of in the above terms. The appellant shall surrender on 22.02.2016 before the Trial Court to serve out the remaining period of substantive sentence.

10. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 15, 2016 / *tr*