

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

RESERVED ON : MARCH 18, 2015

DECIDED ON : MARCH 19, 2015

+ CRL.A. 283/2003

RATTAN MANDAL

..... Appellant

Through : Mr.Dev Dutt, Advocate.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP.

SI Satish Kumar, PS Lajpat Nagar.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appeal is directed against a judgment dated 18.11.2002 in Sessions Case No.01/2002 arising out of FIR No.338/2001 registered at Police Station Sarita Vihar by which the appellant Rattan Mandal was held guilty for committing offences under Sections 363/366/376 IPC. By an order dated 18.11.2002, he was awarded RI for seven years with fine

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₹200/- under Section 376 IPC; RI for three years with fine ₹ 200/- under Section 366 IPC and RI for two years with fine ₹ 200/- under Section 363 IPC. All the substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 23.08.2001 the appellant kidnapped prosecutrix 'X' (assumed name), aged about 14/15 years from the lawful guardianship of her parents and took her to various places. 'X' was detained till 13.09.2001 and was sexually assaulted.

On 23.08.2001 'X' had gone to her school as usual but did not return. Her father Suresh Mathur neither lodged a missing person report on 24.08.2001. Efforts were made to find out 'X' but in vain. On 26.08.2001, on the statement of 'X's father (Ex.PW-5/A) FIR was lodged. On 13.09.2001 SI Bani Oran received intimation from Karnal CT police station about the recovery of 'X' and the appellant. They were brought to Delhi. Appellant was arrested. 'X' was medically examined and she recorded her 164 Cr.P.C. statement. After completion of investigation, a charge-sheet was placed before the trial court against the appellant for the commission of aforesaid offences. The prosecution examined 12 witnesses to establish appellant's guilt. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication. The trial

resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been preferred.

3. During the course of arguments, on instructions, the appellant's counsel informed that the appellant has opted not to challenge the findings on conviction as recorded by the trial court. He, however, prayed to take lenient view and to release the appellant for the period already undergone by him in custody which is almost five years. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances, if any.

4. Since the appellant has given up challenge to the findings on conviction and there is overwhelming evidence on record in the form of statement of the prosecutrix stating her age below 16 years of age at the time of incident, the findings on conviction are affirmed.

5. On perusal of the statement of the prosecutrix and the other relevant witnesses, it stands established that 'X' was a consenting party throughout. The appellant lived her neighbourhood and was acquainted with her. She has admitted that photographs Ex.PY1 to PY4 were taken. She also admitted that letters Ex.PW-DZ1 to Ex.PW-DZ13 are in her handwriting. 'X' had lived with the petitioner at various places for about one month. At no stage she raised any alarm or hue or cry to object to her

alleged forcible kidnapping. Physical relations were established and no external injuries were found on her body. As per her own version, when the appellant came to know that the police was searching them, he took her to police station Karnal where the intimation was given to her parents. At that time, she was wearing a saree purchased by the appellant for her. 'X' was not in any fear or threat to remain silent for so long. In the rented accommodation at Karnal, the landlord and her family members used to meet her but she never complained about the appellant's conduct and behaviour. From all these circumstances, it can safely be inferred that 'X' was a consenting party and it was a case of elopement with consent. Since the age of the prosecutrix was determined below 16 years as per school certificate, the appellant suffered conviction. It is relevant to note that no exact proof about the date of birth of the prosecutrix surfaced during investigation. 'X' and her parents were not aware about her exact date of birth. They have given different dates at different stages of investigation. In the school record, her date of birth has been recorded as 20.10.1989. PWs 3 and 4 attempted to clarify that in the school record, exact age of the prosecutrix was not disclosed. As per ossification test report (Ex.Pw-11/A) she was found more than 14.5 years and less than

15.8 years of age on the date of her examination. Apparently, 'X' was on the verge of attaining the age of 16 years.

6. The appellant was aged about 20 years on the day of occurrence. Nominal roll dated 30.12.2014 reveals that he has already undergone three years, eleven months besides remission for nine months and twenty three days as on 30.12.2014. He is a first time offender and is not a previous convict. He is not involved in any other criminal case. His conduct in jail is satisfactory. Sentence order records that he had the responsibility to maintain his younger brother and sister besides his parents. Considering all these circumstances, I am of the view that there exist special and adequate reasons to award sentence less than seven years as mandated under Section 376 IPC. In *Sanjay vs. State* 2014 (1) C.C.Cases (HC) 326, this Court held:

“The legislature in its wisdom made a provision for awarding a sentence of less than seven years when there are special and adequate reasons for the same. I have before me the prosecutrix’s testimony. It goes without saying that the prosecutrix merrily proceeded with the Appellant most willingly. She travelled with him in a bus and then in a train to Luchnow. The prosecutrix was brought back to Delhi by the Appellant himself where the Appellant and the prosecutrix were apprehended at New Delhi Railway Station by the police. Thus, although the Appellant does not want to contest the appeal on merits, it is borne out from the record that it was a case of

consensual intercourse with the prosecutrix. While awarding punishment, the Court has to take into consideration the mitigating and aggravating circumstances. The prosecutrix was aged 15 years and eight months and she was incapable of giving the consent for sexual intercourse. I have seen numerous cases where the girls sometimes less than 16 years of age take a lead in eloping with a boy, enters into a marriage with the boy and have sexual intercourse with him. Such a predicament was noticed by this Court in several cases including in two judgments passed by the Division Benches of this Court, namely, Manish Singh v.State Govt. of NCT & Ors, AIR 2006 Delhi 37 and Bholu Khan v.State of NCT of Delhi & Ors. (W.P.(Crl.)1442/2012 dt.01.02.2013.”

Considering the age of the prosecutrix and the facts narrated above, in my view, it is a fit case where sentence less than the minimum should be awarded. Similar view was taken and sentence less than minimum was awarded by a learned Single Judge of this Court in Brij Pal v.State (Crl.Appeal No.278 of 2000) decided on May 31, 2011. I accordingly, sentence the Appellant to undergo RI for four years and to pay a fine of Rs.2,500/- for each of the offences under Sections 366 and 376 IPC, and in default of payment of fine, the Appellant shall undergo SI for one month each. Both the substantive sentences shall run concurrently.”

7. In the light of the above discussion, while maintaining conviction, the sentence order is modified and the period already undergone by the appellant in this case is taken as substantive sentence. Of course, he will deposit the fine (if any) and for non-payment of it shall undergo default sentence for ten days. Copy of this order be sent to the

concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order. The appellant be released forthwith if not required to be detained in any other case.

(S.P.GARG)
JUDGE

MARCH 19, 2015
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