

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

% *Date of Judgment :09th July, 2015*

+ CRL.A. 168/2012

RAJESH

Through Appellant
Appellant from custody on
production warrants with Mr.B.S.
Chaudhary and Ms.Chitra
Goswami, Advs.

versus

STATE NCT OF DELHI

Through Respondent
Ms.Parmod Saxena, APP for the
State with ASI Davender Kumar
in person.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This appeal is directed against the impugned judgment and order on sentence dated 25.11.2011 and 26.11.2011 respectively wherein the appellant Rajesh has been convicted for the two separate offences under Sections 363/376(2)(f) of the IPC. He has been sentenced to undergo a maximum incarceration of RI 10 years besides fine for each of the two offences.

2. Record shows that apart from the present accused, two other persons had been charge-sheeted i.e. the sister and brother-in-law of the appellant namely Meera and Ishwar Lal. They have since been acquitted.

3. The case as set up by the prosecution is that the prosecutrix aged about 13 years had been enticed by the appellant and taken to Kanpur where she was kept in a house belonging to the friend of the appellant. The appellant committed rape upon the prosecutrix. Police report was lodged in the police station on 03.03.2010. On 07.03.2010, the accused was arrested. Charge-sheet was filed against him.

4. The prosecution in support of its case has examined 17 witnesses of whom the prosecutrix has been examined as PW-2. She has deposed that her friend Anju, who was the niece of the appellant had called her on the pretext that her mother was calling her. On going to the house, she was asked to accompany the appellant to the market. The appellant instead of taking her to the market, took her to the railway station and then on reaching Kanpur, he took her to his friend's house where she stayed with the appellant for 3-4 days. In Kanpur, the appellant gave her

something to eat which made her unconscious and on regaining consciousness, she found that the accused had committed rape upon her. In her cross-examination, she has admitted that the appellant used to stay with his sister and brother-in-law; he used to visit their house occasionally. She stayed in Kanpur with the accused for 6-7 days. She admitted that while going to railway station, the accused had hired a cycle-rickshaw and from the bazar, they had gone to the Kanpur railway station. They got down from the train and reached the house of the friend of the accused. She admitted that there was no toilet or bathroom in that house and toilet and bathroom was in the front of the house. She remained with Rajesh for 6-7 days in that house.

5. The vehement submission of the learned counsel for the appellant that this testimony of PW-2 clearly discloses that she had gone with the accused on her own; had it been a case of force or pressure, there was ample opportunity for her to have shouted or sought help from the neighbours. Admittedly, there was no toilet or bathroom in the house where she stayed. She had gone for defecation outside the house. Even at that time, she did not tell anybody; she had willingly gone with

Rajesh who had befriended her and was known to her. In this context, learned counsel for the appellant has drawn attention of this Court to DD No. 17-A (Ex.PW-3/A) recorded on 03.03.2010 which was a complaint lodged by the father of the appellant. DD No. 30-A was lodged in the police station on 07.03.2010 (Ex.PW-5/A) wherein on 07.03.2010 both the appellant and the victim reached to the police station and reported there after returning from Kanpur. Submission of the learned counsel for the appellant being that the victim was a willing partner with the appellant.

6. The MLC of the victim was proved through Dr.Udai Kumar (Ex.PW-4/A). No fresh external injury was noted on her body. Her hymen was however found ruptured.

7. The date of birth of the victim was 05.06.1999 and she was around 11 years on the date of the incident. This position is in fact not disputed by the learned counsel for the appellant and he fairly concedes that in this background since the victim was a minor and there could be no consent of a minor, the sentence in this background of RI 10 years is harsh and sentence be reduced.

8. This incident is of the year 2009 and thus the pre-amendment law i.e. prior to the Criminal Law (Amendment) Act, 2013 is applicable.

9. 'Rape' has been defined under Section 375 of the IPC and rape of a minor girl who is below 16 years of age shall be punishable up to minimum sentence of 7 years.

10. Accordingly, in this background the sentence of the appellant is modified and RI for the offence 376 (2)(f) is reduced from 10 years to RI 7 years. The other part of the sentence remains unaltered. This Court has been informed that the appellant has already undergone almost about six years. He is also present today in Court. He is informed of the modification in his sentence.

11. Appeal disposed of in the above terms.

12. A copy of this order be sent to the Jail Superintendent for intimation and compliance.

INDERMEET KAUR, J

JULY 09th 2015

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