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

**DECIDED ON : 2<sup>nd</sup> MARCH, 2015**

+ **CRL.A.No.321/2014**

KISHAN LAL ..... Appellant

Through : Mr.Dinesh Malik, Advocate with  
Mr.Gurpreet Singh, Advocate.

versus

THE STATE (NCT OF DELHI) ..... Respondent

Through : Ms.Kusum Dhalla, APP.

**CORAM:  
HON'BLE MR. JUSTICE S.P.GARG**

**S.P.Garg, J. (Oral)**

1. The instant appeal is directed against a judgment dated 05.07.2013 of learned Additional Sessions Judge in Sessions Case No. 91/11 arising out of FIR No.149/11 PS Sangam Vihar by which he was convicted for committing rape on 'X' aged 14 years. By a sentence order dated 19.07.2013, RI for seven years with fine ₹ 5,000/- was awarded to him.

2. Admitted position is that, the appellant is a step-father of the prosecutrix 'X' (Assumed name) and they all lived together at Sangam Vihar. The incident was reported to the police on 03.05.2011. The Investigating Officer lodged First Information Report after recording victim's statement (Ex.PW-3/A). She disclosed that her step-father used to commit rape repeatedly on her person for the last two years putting her in fear. In her medical examination, 'X' was found pregnant. The child was aborted and the foetus was preserved. DNA report confirmed the appellant to be the perpetrator of the crime responsible for making 'X' pregnant. He was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against him under Section 376 IPC. The prosecution examined twelve witnesses in all to bring home the appellant's guilt. In 313 statement, he denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction.

3. I have heard the learned counsel for the parties and have examined the record. Crucial testimony to infer the appellant's guilt is that of 'X' aged about 14 years. Her version throughout is consistent. In her statement (Ex.PW-3/A) given to the police at first instance, she categorically implicated the appellant for committing rape upon her. In

her 164 statement (Ex.PW-11/C), she gave detailed account as to how and under what circumstances, after putting her in fear, the appellant in the absence of her mother used to ravish her for the last about two years. She further accused the appellant to have indulged in oral sex. In her Court statement as PW-1, 'X' adhered to the initial version without any deviation. No ulterior motive was assigned to her for falsely implicating her step-father upon whom she was dependent for her livelihood. She was abused for about two years but was scared to lodge any complaint against him. Only when symptoms of pregnancy surfaced and she could not further conceal the nefarious act of the accused, she divulged the incident to her mother and grandmother. The medical evidence confirmed her version in its entirety. In the MLC (Ex.PW-1/A), her hymen was found ruptured. She had a pregnancy of 12 weeks duration. PW-4 (Dr.Anupuma Raina) in her DNA report (Ex.PW-4/A) concluded that the foetus was the biological offspring of 'X' and Kishan Lal (the appellant) as per Mendelian Law of Inheritance. PW-5 (Shakuntala), victim's mother has spoken on similar lines and has corroborated the victim's statement. In 313 statement, the accused did not take plausible defence and did not offer any explanation as to how 'X', his step-daughter became pregnant. He alleged that 'X' had illicit relations with many boys in the street.

However, he did not name any such boy. He did not furnish reason for not taking any action against the alleged culprit for making her daughter pregnant. The defence taken is inconsistent and contradictory. In the grounds of appeal, the appellant took the plea of 'consent'. No such suggestion was put to 'X' or her mother if the sexual relations with 'X' were with her free consent. The appellant being the step-father of the victim is not imagined to have sexual relations even with her consent. He stood in a fiduciary capacity and was duty bound to protect her. Beside this, X was about 14 years old on the date of lodging the report; she was aged about 12 years when for the first time she was subjected to rape. As per birth certificate (Ex.PW-3/B), her date of birth was 23.09.1998. To ascertain her age, ossification test was also conducted by PW-10 (Dr.Prashant Kundu) and as per report (Ex.PW-10/A), her age was above 14 years and below 14.9 years. Even her consent for physical relations with the appellant was inconsequential; she being below 16 years. The appellant did not examine any witness to prove that 'X' was above 16 years of age on the day of occurrence. It is unbelievable that 'X' would consent for physical relations with her father to bear his child. Only when she started vomiting, it came to the knowledge of her mother and grandmother that she was sexually abused by her step-father. No valid

reasons exist to disbelieve or suspect the statement of the prosecutrix and her mother particularly when there is no conflict between the ocular and medical evidence. No further reasons are required to be detailed to dismiss the appeal which lacks merits.

4. The appellant was related to the prosecutrix being her step-father. The victim aged 12 years was too innocent to understand the consequences of his act. She was scared to inform her mother and continued to be tormented by him for about two years. Under these circumstances, sentence order needs no modification except that the default sentence for non-payment of fine ₹ 5,000/- shall be Simple Imprisonment for fifteen days.

5. The appeal stands disposed of in the above terms. 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**

**MARCH 02, 2015 / tr**