

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

**RESERVED ON : MARCH 12, 2015
DECIDED ON : MARCH 25, 2015**

+ CRL.A. 803/2005 & Crl.M.A.10115/2005

AMAR PAL SINGH

..... Appellant

**Through : Mr.Raj Pal Singh with Mr.Sauraj Singh
and Ms.Meenakshi, Advocates.**

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J.

1. The present appeal is directed against a judgment dated 11.08.2005 in Sessions Case No.10/05 arising out of FIR No.582/99 registered at Police Station Timarpur by which the appellant-Amar Pal Singh was convicted under Section 452/376/506-II IPC. By an order

dated 20.08.2005 he was sentenced to undergo RI for two years with fine ₹1,000/- under Section 452 IPC; RI for ten years with fine ₹1,000/- under Section 376 IPC and RI for two years with fine ₹1,000/- under Section 506-II IPC. The substantive sentences were to operate concurrently.

2. Briefly stated the prosecution case as projected in the charge-sheet was that on 01.12.99 at about 2:30/2:45 p.m. the appellant committed rape upon prosecutrix 'X' (assumed name), aged 14 years, in her house No.1466, Street Peeli Kothi, Nathu Colony, Nathupura, Delhi after putting her in fear. The police machinery was set in motion when the incident was reported and DD No.14 (Ex.PW-13/A) came into existence at Police Post Burari, Police Station Timarpur at 03:12 p.m. The investigation was assigned to HC Devender who with Ct.Satish Kumar went to the spot. The Investigating Officer lodged First Information Report after recording victim's statement (Ex.PW-1/A); she was medically examined. The accused was arrested and medically examined. Statements of witnesses conversant with facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellant in the court. The prosecution examined 14 witnesses to prove its case. In 313 Cr.P.C. statement

denying the allegations, the appellant pleaded false implication. No evidence in defence was produced. The trial resulted in his conviction as aforesaid. Feeling aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. During the course of arguments, on instructions, the appellant's counsel stated at Bar that the appellant has opted not to challenge the findings on conviction recorded by the trial court. He, however, prayed to take lenient view as the appellant has undergone substantial period of substantive sentence awarded to him. Learned APP has no objection to consider the mitigating circumstances.

4. The appellant has opted to give up challenge to the findings recorded by the trial court on conviction. The trial court believed the victim's version and convicted the appellant for committing rape upon her after putting her in fear. On perusal of the evidence produced by the prosecution, the reasoning given by the trial court to convict the appellant under Section 376, however, cannot be sustained. From the statement of the prosecutrix and other materials on record, it can safely be inferred that physical relations between the two were with victim's consent. Since the prosecutrix was below 16 years of age, her consent to have physical

relations was inconsequential. On that aspect, conviction under Section 376 is to be maintained.

5. It has come on record that the appellant and prosecutrix were acquainted with each other prior to the incident. He lived in her neighbourhood. On the day of incident 'X' returned from her school at around 1:40 p.m. After her mother went to the house of Mr.Bagraj, their neighbour, 'X' bolted the room from inside. The appellant allegedly arrived in the house from the roof and physical relations were established. No hue or cry was raised by the prosecutrix at that time. It so happened that when the prosecutrix and the appellant were in compromising position, 'X's mother arrived and knocked at the door. Before 'X' could open the door, the appellant went away from the spot through roof. The prosecutrix did not open the door quickly and provided an escape route to the appellant. She was taken for medical examination and no external visible injuries were found on her body. Had there been forcible rape, there was every possibility of the prosecutrix to have sustained struggle marks. In her cross-examination 'X' denied to have ever gone to the shop of any photographer. However, when confronted with photograph (Ex.PW-1/DA) along with the appellant, she admitted that it was taken in a shop of a photographer at Burari. She further revealed that the appellant

had taken her from the bus stand next to her school bus stop where she was standing for taking bus. She stated that the appellant had taken her under threat. However, admittedly no complaint was made by her to her family members about this. The appellant examined Ashok Kumar-photographer in defence as DW-1. He deposed that the prosecutrix had visited his shop along with the appellant. She did not complain about the conduct and behaviour of the accused. From the very inception, the appellant's case is that the prosecutrix wanted to marry him and her parents did not agree being of different castes. The prosecutrix was aged below 16 years on the date of incident as her date of birth as recorded in school certificate was 25.05.1985. This date of birth has remained unchallenged.

6. Regarding sentence, nominal roll reveals that before the appellant was enlarged on bail on 11.10.2007, he had undergone four years, five months and eleven days in custody besides remission for eight months and seventeen days as on 05.10.2007. He was not involved in any other criminal case. His overall conduct in jail was satisfactory. He was not a previous convict. Sentence order records that the appellant was to support his family and was a very poor person. The appellant has placed on record various documents to show that after enlargement on bail, he

has attained various educational qualifications. He got married on 27.02.2009 and his wife is on family way and the due date for delivery is 11.09.2015. Since release, he is gainfully employed in various institutions. Finally he joined Global Social Compliance Corporation in October, 2013 and is working there till date. He has also completed his B.A. qualification and is to appear for M.A. Part II examination.

7. Considering these mitigating circumstances, no useful purpose will be served to send the appellant in custody again. He was aged about 18/19 years on the day of incident. 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.”

8. 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.

9. All pending application (s) also stand disposed of.

(S.P.GARG)
JUDGE

MARCH 25, 2015

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