

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

**RESERVED ON : 18th FEBRUARY, 2015
DECIDED ON : 12th MARCH, 2015**

+ CRL.A. 127/2006

MANOJ Appellant

Through : Mr.G.P.Thareja, Advocate.

VERSUS

STATE (NCT) DELHI Respondent

**Through : Mr.Navin K.Jha, APP.
SI Kuldeep Singh, PS Khajoori
Khas.**

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 27.01.2006 in Sessions Case No.79/03 emanating from FIR No. 71/03 PS Khajoori Khas by which the appellant – Manoj was held guilty for committing offence under Section 366 IPC, the instant appeal has been preferred by him. By an order dated 27.01.2006, the appellant was awarded RI for five years with fine ₹ 3,000/-. It is significant to note that co-convict – Nekh Pal @ Nek Pal was held guilty under Sections 366/376 IPC and was sentenced to undergo RI for ten years with fine ₹5,000/- under Section 376 IPC. It is unclear if Nekh Pal had filed any appeal to challenge the judgment.

2. Facts and circumstances giving rise to the instant case are that on 18.03.2003, Niranjana Singh lodged First Information Report at PS Khajoori Khas disclosing that her daughter 'X' (assumed name) aged around fifteen years who had gone to take exam in Senior Secondary School, Khajoori Khas on 17.03.2003 had not returned. Investigation was assigned to SI Omvir Singh. Efforts were made to search 'X' at various places and finally, she was found at village Karim Nagar, Distt. Hardoi, U.P. on 21.03.2003 in the company of co-convict - Nekh Pal. 'X' was medically examined. Statement of the witnesses conversant with the facts were recorded. Both, Manoj and Nekh Pal were arrested; they were medically examined. After completion of investigation, a charge-sheet was submitted against both of them in the Court. The prosecution examined ten witnesses to establish their guilt. In 313 Cr.P.C. statements, the accused persons denying their complicity in the crime pleaded false implication. However, they did not examine any witness in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the file. Conviction of the appellant and co-convict – Nekh Pal is primarily based upon the sole testimony of 'X'. She deposed that she

was kidnapped by Nekh Pal on 17.03.2003 and was taken to his village, where she was sexually assaulted by him. Attributing a specific role to the appellant, she deposed that the appellant had accompanied them to the village Karim Nagar. Prior to that, he had enticed her to accompany with Nekh Pal stating “Iske saath chali ja, mauj karegi”. She further deposed that she was put under fear by Nekh Pal by showing a knife and was ravished. Findings of the Trial Court reveal that ‘X’ was a consenting party throughout. The accused persons were held guilty as ‘X’ was below sixteen years of age and her consent to accompany the accused persons or to have physical relations with Nekh Pal was inconsequential.

4. Admitted position is that the accused persons were ex-tenants of X’s father in the premises. ‘X’ was acquainted with them before the incident and used to have conversation with them. She remained in the company of co-accused Nekh Pal in his village for about a week. She had accompanied with him on 17.03.2003 when she had gone to take her exam in the school. Instead of taking her exam, she accompanied Nekh Pal to his village. She did not raise any alarm / hue and cry at any stage objecting to her alleged kidnapping / abduction against her wishes. In her statement as PW-4 she admitted that she accompanied Nekh Pal who took her to his friend’s house, where she changed her school uniform.

Thereafter, Nekh Pal took her in a three-wheeler scooter to Anand Vihar ISBT and they went to Hardoi in a bus. 'X' had ample opportunity to attract the attention of the public particularly when Nekh Pal was not armed with any weapon to create apprehension in her mind. During her stay with Nekh Pal, physical relations were established. In the MLC (Ex.PW-9/A), no external injury on her body was noticed. She has admitted that photographs Ex.D1 and Ex.D2 which show her in happy mood were taken during her stay with Nekh Pal. She also admitted that letters Ex.D3 and Ex.D4 were in her handwriting and were written to Nekh Pal. Apparently, 'X' was in love with Nekh Pal and had accompanied him with her free consent. Findings of the Trial Court cannot be faulted on this score.

5. Regarding the appellant, admitted position is that he did not sexually assault 'X' at any stage. He was not present on 17.03.2003 when 'X' accompanied Nekh Pal on the way to her school. He was not found present at the time of recovery of the prosecutrix at the house of Nekh Pal in his village. It is not clear as to when the appellant had uttered the words "Iske saath chali ja, mauj karegi". Since Nekh Pal and 'X' were in love, these words, if any, uttered by the appellant had no impact. 'X' herself had accompanied Nekh Pal. Mere knowledge of her company with Nekh

Pal to the appellant is not enough to convict him under Section 366 IPC. He himself was not instrumental in any manner in the kidnapping and no role whatsoever was attributed to him in this regard. Apart from this, statement of the prosecutrix herself is wavering. In her cross-examination conducted on the same day, she admitted that Manoj did not accompany them; she did not know him and he did nothing. When she was recalled for cross-examination on 24.11.2005, she even exonerated Nekh Pal and admitted that she had gone with him of her own accord and no force was used by him. In her 161 Cr.P.C. statement, she had disclosed that she used to have conversation with Nekh Pal before the incident and he wanted to marry her. She further stated that from Anand Vihar ISBT, she and Nekh Pal had gone to Karim Nagar, Distt. Hardoi, U.P. where she was kept as his wife by him. She even stated that Nekh Pal had performed marriage with her in the Court.

6. 'X' was in the age of discretion, sensible and aware of the intention of co-accused Nekh Pal and had accompanied him to his village. She was a willing party to go with him and in that sense there was no 'taking' out of the guardianship of her parents. The appellant – Manoj had no role in the incident. In these circumstances, appellant's conviction on the sole wavering testimony of the prosecutrix without independent

corroboration cannot be sustained. In view of the fact and circumstances of the case, the act and conduct of the accused cannot be regarded as an overt act for inducement in reference to the offence under Section 366 IPC.

7. In view of the above analysis of the prosecution witnesses and materials on record, the appellant is entitled to benefit of doubt. Resultantly, the appeal is allowed and conviction and sentence awarded by the Trial Court are set aside. The appellant is acquitted of all the charges.

8. 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 12, 2015 / *tr*