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

% *Judgment reserved on :10.12.2015.*
Judgment delivered on :15.12.2015

+ CRL.A. 869/2013
CHAND

..... Appellant
Through Mr. Ankur Sood and Mr.
Shoumendu Mukherjee,
Advocates

versus

STATE NCT OF DELHI

..... Respondent
Through Ms. Kusum Dhalla, APP for the
State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 28.07.2012 and 31.07.2012 respectively wherein the appellant stands convicted under Sections 366/376 of the IPC. The maximum sentence awarded to him is RI 7 years. He also has to pay a fine of Rs.7,000/- and in default of payment of fine to undergo SI for 3 months.

2 Nominal roll of the appellant has been requisitioned. It reflects that as on date, he has undergone incarceration of 5- ½ years which includes the remissions earned by him.

3 The version of the prosecution is that on 29.04.2011, a complaint was received from one Ramanand which was to the effect that his daughter 'AJ' aged 14 years was missing since 3 PM. She had not returned home. FIR was initially registered under Section 363/366 of the IPC. In the course of investigation, it was suspected that appellant Chand had taken the prosecutrix to Jhajhar, Haryana. The victim had stayed in the house of the appellant at Panipat from where they were recovered. Her bony age was determined by the doctor on 12.05.2011 who had opined her age to be between 16-17 years. On 07.05.2011, the statement of the victim under Section 164 of the Cr.PC was recorded. She was sent to Nirmal Chaya.

4 The prosecution in support of its case has examined as many as 15 witnesses. The star witness of the prosecution was the prosecutrix herself examined as PW-5. She had deposed that on the fateful day when she was going to her mausi's house, the appellant who was her neighbor had met her. She stopped for five minutes as she thought that

there was no harm in stopping. He thereafter forcibly put her in the car; she tried to raise alarm; he threatened that her parents would be killed; he wanted to marry her. She refused. Accused took her in a house and committed rape upon her against her wishes. Thereafter he took her in another house and kept her for 2 days. After 2-3 days, the police came and apprehended him. Her statement under Section 164 of the Cr.PC was recorded. She was subjected to a lengthy cross-examination. She admitted that she is an illiterate and had never gone to the school. She admitted that the accused started residing in a house adjacent to her house since the last 2-3 weeks and she had no friendly terms with him. On the fateful day, the accused pulled her into the car against her wishes. She reiterated that she was kept in the house for two days and the accused had committed forceful act of rape upon her against her wishes. She denied the suggestion that she wanted to marry the appellant.

5 The father of the victim Ramanand Jha was examined as PW-6. He has reiterated on oath that on 28.04.2011, he had lodged a missing report of his daughter. His daughter was aged 14 years and she has returned home since 03:00 pm. After 7 days her daughter was recovered

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by the police. In his cross-examination, he admitted that appellant was residing opposite their house since the last 15 days. In another part of his deposition, he admitted that his daughter was recovered after 2 days.

6 The mother of the victim Smt. Prabha was examined as PW-7. She had accompanied her daughter when the bony age of the victim was recorded. The bony age of the victim given by Dr. L.R.Richhele (PW-7) who had opined her age between 16 to 17 years and the Trial Judge noting the bony age of the victim and giving a benefit of two years had held the victim to be an adult. This finding has not been challenged.

7 Noting the above background, learned counsel for the appellant has argued that since the victim was admittedly an adult and she had accompanied and stayed with the appellant for two days on her own consent, this is a clear case where the appellant has been falsely implicated.

8 Learned counsel for the State has refuted these submissions.

9 Record shows that the appellant and the victim were known to each other since the last 2-3 weeks. This has come in the version of PW-5 as also her father (PW-6). It is not the case where the victim was well known to the appellant and she was friendly or even well

acquainted with him. She in her statement recorded under Section 164 of the Cr.PC which has been corroborated by her version on oath stated that the appellant had met her on her way to her mausi's house and had asked her to stop. She stopped for five minutes. She thought that there was no harm in it. Thereafter the appellant forcibly took her into the car and had committed the unholy act of rape upon her against her wishes. The victim was admittedly an illiterate girl. She had been taken to Panipat where the incident had occurred. This place was admittedly at a long distance and away from her house and as such the submission of the learned counsel for the appellant that the victim did not try to run from the clutches of the appellant is of little force. A young girl in her teens, who was admittedly an illiterate would have no knowledge of the topography of a foreign place; she was admittedly taken out station at Panipat and her having knowledge of how to return back would have been almost impossible. Thus the submission of the learned counsel for the State that she was forced to stay with the appellant against her wishes in this intervening period is a submission which carries weight.

10 Although the medical evidence is not supportive of the version of the prosecution yet the testimony of the witness qualifies as one of

sterling quality. Her testimony is cogent and coherent. There was no reason for her to have falsely implicated the accused. Her forceful stay at Panipat with the appellant was not out of consent; it was a forcible and coercive act of the appellant upon the victim. By no stretch of imagination, can it be termed as a 'consent'. The testimony of the victim although uncorroborated fulfills the parameters of clarity and cogency. The judgment relied upon by the learned counsel for the appellant reported as 2012 (131) DRJ 3 (SC) Rai Sandeep @ Deepu Vs. State of NCT of Delhi does not apply to the factual matrix of the instant case. The conviction of the appellant does not call for any interference. The appellant has already been granted the minimum sentence i.e. RI 7 years for the offence for which he has been convicted.

11 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 15, 2015

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