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

% *Judgment reserved on : 16.11.2015*
Judgment delivered on : 20.11.2015

+ CRL.A. 1090/2013

RAM LAL YADAV @ RAM

..... Appellant

Through Mr. Vinod Kumar, Advocate.

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for the
along with Insp. Sushila Rana.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 04.04.2013 and 05.04.2013 respectively wherein the appellant namely Ram Lal Yadav stood convicted under Section 376 of the IPC. He has been sentenced to undergo RI for a period of 10 years and to pay fine of Rs. 10,000/- and in default of payment of fine to undergo RI for a period of 2 years. Benefit of Section 428 of the Cr.PC had been granted to the appellant.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date he has undergone incarceration of about almost 4 years which includes the remissions earned by him. His jail conduct is satisfactory.

3 The version of the prosecution is that the prosecutrix (examined as PW-4) being an adult had come to Delhi in search of work. This was in the year 2009. A placement agency had placed her in the house of Mr. Sanjay Kapoor. The wife of Mr. Sanjay Kapoor was examined as PW-5. The appellant Ram Lal Yadav was working as a servant in that house. He was a cook. Friendship between the appellant and the prosecutrix grew. In June, 2011 he expressed his desire to marry the prosecutrix. He had thereafter committed a wrong act upon her which was against her consent. The prosecutrix learnt that she was pregnant. Appellant told her not to worry and that he will marry her. On his asking she started taking medicines. In December, 2011 the appellant took a leave to go to his village on the grounds of illness of his wife and it was only at that point of time that the prosecutrix learnt that the appellant was a married man. She informed her employer pursuant to which the

present FIR was recorded.

4 The prosecution in support of its case has examined as many as 13 witnesses of whom the star witness of the prosecution was the prosecutrix herself who was examined as PW-4. The statement of the prosecutrix has been recorded under section 164 of the Cr.P.C. by the learned Metropolitan Magistrate (PW-9). Smt. Bobby Kapoor owner and landlord of the house was examined as PW-5. The prosecutrix was medically examined by Dr. Kalpana who was examined as PW-7..

5 In the statement of the accused recorded under Section 313 of the Cr.P.C. he pleaded innocence stating that the relationship between the prosecutrix and himself was a consensual relationship and there was no force. She had established a physical relationship with him on her own accord. In fact she was fully aware of the fact that he was already a married man. He was entitled to an acquittal.

6 The defence of the appellant was not taken into account. On the evidence collected by the prosecution the appellant stood convicted.

7 On behalf of the appellant, learned counsel for the appellant points out that the Trial Court has committed a grave irregularity in

ignoring the version of PW-4 and PW-5 who have both unequivocally stated that it was by consent that a physical relationship between the appellant and PW-4 was established. PW-5 admitted that PW-4 was fully aware of the fact that the appellant was a married man and her defence now projected that she did not know that he was a married man is a false statement.

8 Needless to state that these arguments have been refuted by learned Public Prosecutor.

9 In the course of the submissions and counter submissions made by the counsel for the parties, it has come on record that the prosecutrix had given birth to a male child. The DNA profile of the child matched the DNA of the appellant evidencing the fact that this child was born out of the physical relationship between the appellant and the prosecutrix. The appellant was in judicial custody and was also produced on a production warrant ordered against him. He has not denied the factum that this child was his child. He has, before this Court, stated that he was willing to keep the prosecutrix as his wife but since the law does not permit him as the appellant is already a married man, this statement of

the appellant was of no consequence. Appellant in the course of the proceedings (with great difficulty under the guidance of his counsel) managed to collect to Rs.1 lakh which he has now deposited in the name of his child in the form of an FDR. This Court has ensured that this amount has fallen into in the account of this child.

10 Record has been perused.

11 PW-4 was the prosecutrix who was admittedly an adult. She was more than 18 years on the date of the offence. She has on oath stated that the appellant was known to her; he was working in the same house where she was working. They used to talk with one another. When their employer was away the accused did 'galat kaam' with her. She explained that 'galat kaam' meant what married people do with one another. Appellant told her that he would marry her. He scolded her and told her not to disclose these facts to their employer. She did not do so. She became pregnant. She told this to the accused. He promised to marry her. In 2011, the accused went to his village stating that his wife was not well. PW-4 till that time did not know that he was already married. She was medically examined.

12 In her cross examination she admitted that she and the appellant were on friendly terms and they used to love one another and for this reason she had a relationship with him. Accused did not force himself upon her. At the time when they had a physical relationship the marital status of the accused was not known to her; i.e. whether he was married or unmarried. There was a telephone connection in their house. She denied the suggestion that she knew that the accused was a married man and she had entered into this relationship knowing fully well that he was a married man.

13 Testimony of PW-4 discloses that it was by way of consent that parties were in relationship with one another. PW-4 was an adult; her defence was that this physical relationship was on the pretext of marriage. In this context the testimony of PW-5 is relevant. She was the lady employer where PW-4 and the appellant were both employed. PW-4 was working with her since 2009; she had joined her through a placement agency. Appellant was also working there as a cook since the last about 13 years. In November, 2011 PW-5 suspected that PW-4 was having a problem. At that point of time she learnt that PW-4 was

pregnant. PW-4 revealed the name of the person who was responsible for her pregnancy. PW-5 confronted PW-4 who stated that she had committed a mistake and she wanted the child aborted. PW-5 categorically stated that PW-4 knew that the appellant was a married man to which PW-4 replied that it was a mistake; the act was committed; she could not say if the appellant was married or not.

14 In her cross examination PW-5 admitted that prosecutrix knew from before that accused was a married man. There were phone calls from the wife of the accused on her mobile which she had given to PW-4 for handing over to the appellant so that he could talk to his wife and PW-4 was thus fully aware of the fact that appellant was a married man. Even on another occasion the appellant had asked PW-5 to take blessings from Sai Baba as his wife was expecting his third child; all these talks had taken place in the presence of PW-4.

15 This part of the evidence of PW-5 clearly establishes that the PW-4 was fully aware of the fact that PW-5 was a married man. This clinches the issue on the only defence which has been raised before this Court and which is to the effect that the prosecutrix had entered into this

physical relationship with the appellant only on the promise of marriage. This defence falls flat in view of the version of PW-5. The evidence on record establishes that PW-4 was well aware of the fact that appellant was a married man. Telephone calls between the appellant and his wife were exchanged in her presence and this was on mobile phone of PW-5 who had on 2-3 occasions handed over this phone to PW-4 so that the appellant could talk to his wife. The fact that appellant had taken blessings from Sai Baba hoping for a male child was also in the presence of PW-4. All this negatives the argument raised before this Court that the prosecutrix was unaware of the marital status of the appellant.

16 PW-4 in her statement has admitted that she was in love and thus had a relationship with the appellant. She was an adult. She entered into this relationship with consent and also being aware of the fact that the appellant was a married man knowing fully well knew the repercussions of her act. Ingredients of section 375 of the IPC which defines rape is clearly not made out; thus offence of rape has not been established. The Trial Court has committed a grave irregularity in ignoring this evidence

which was writ large on the record.

17 Appellant is entitled to a benefit of doubt and a consequent acquittal. Appeal is allowed. Appellant be released forthwith if not required in any other case.

INDERMEET KAUR, J

NOVEMBER 20, 2015

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