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

**RESERVED ON : JULY 06, 2015**

**DECIDED ON : JULY 21, 2015**

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**CRL.A. 854/2012**

VINOD KUMAR

..... Appellant

Through : Mr.Sumeet Verma, Advocate with  
Mr.Amit Kala, Advocate.

VERSUS

STATE

..... Respondent

Through : Ms.Fizani Husain, APP.

**CORAM:**

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

**S.P.GARG, J.**

1. The instant appeal has been preferred by the appellant-Vinod Kumar to impugn a judgment dated 12.03.2012 of learned Additional sessions Judge in Sessions Case No.02/2011 arising out of FIR No.226/2010 registered at Police Station Ranhola by which he was held guilty for committing offence under Section 376/506 IPC. The appellant was sentenced to undergo RI for ten years with fine ₹2,000/- under Section 376 (2) (f) IPC and RI for one year with fine ₹1,000/- under Section 506 IPC. The sentences were to run concurrently.

2. Briefly stated the prosecution case as projected in the charge-sheet was that on 28.10.2010 at about 12.00 noon at House No.68, Road No.8, Sainik Enclave, Mohan Garden, Delhi, the appellant committed rape upon prosecutrix 'X' (assumed name) aged, 15/16 years and criminally intimidated her. Soon after the incident, 'X' apprised her mother about the incident. Police was informed and the Investigating Officer recorded victim's statement (Ex.PW2/A); lodged FIR by making endorsement (Ex.PW-10/B) over it. 'X' was medically examined; she recorded her statement under Section 164 Cr.P.C. The accused was apprehended and medically examined. Exhibits collected during investigation were sent for examination to FSL. After completion of investigation, a charge-sheet was laid before the Court. The prosecution examined twelve witnesses to substantiate its case. In 313 statement, the accused denied his involvement in the crime and pleaded false implication. Ms.Chandrawati appeared in defence as DW-1. After appreciation of the evidence and considering the rival contention of the parties, the Trial Court convicted the appellant as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. The incident took place at around 12.00 noon on

28.10.2010. Soon thereafter 'X' was taken for medical examination at Sanjay Gandhi Memorial hospital, Mangolpuri at 4.25 p.m. MLC (Ex.PW-5/G) records the alleged history of 'sexual assault'. The appellant was specifically named before the doctor by the victim for 'sexual assault'. Statement of the prosecutrix was recorded promptly and FIR was lodged at 6.30 p.m. Apparently, there was no delay in setting the police machinery into motion. In her statement (Ex.PW-2/A), the victim gave detailed account as to how and under what circumstances, the appellant had committed rape upon her after alluring her to his house. Since the incident was reported without any delay and the appellant was named to be the author of the crime, there was least possibility of the child victim and her mother to concoct a false story against him in such a short span of time.

4. In her 164 Cr.P.C. Statement (Ex.PW2/B) recorded on 1.12.2010, again, 'X' gave vivid description of the occurrence and specifically named the appellant to be the perpetrator of the crime. In her Court statement as PW-2 also, she proved the version given to the police and before the Magistrate without any material variation. Learned Presiding Officer conducted preliminary enquiry and put various questions before recording her statement. After satisfying that the child

witness was competent to understand the questions and was able to give rational answers, her statement was recorded without oath. In her deposition, she identified the accused to be the author of the crime as he lived in her neighbourhood and she used to address him 'uncle'. She elaborated that when she was playing outside her house in the street, the accused took her to his house on the pretext that his sister was calling her. Though she was not interested to go, the accused took her in the house and committed rape upon her after disrobing her. He gave ₹15 to her after the incident and warned not to inform her mother. When she was on her way, she fell down and was lifted by a 'lady' who brought her to the house. She narrated the incident to her mother who immediately called the police. In the cross-examination, the witness was asked various questions which were duly answered by her. She elaborated that there was a 'cot' in the house of the accused and none else was present there that time. She denied to be a tutored witness. Needless to say, no material discrepancies or infirmities could be extracted in her cross-examination which may raise any kind of doubt on the truthfulness of her testimony. No ulterior motive was assigned to the child to falsely implicate him. Nothing has emerged if 'X' or her mother nurtured any grievance or ill-will before the incident to falsely implicate the appellant

in the case. There are no cogent reasons to suspect the credibility of the prosecutrix's statement. She is consistent through out. Her testimony clearly inspires confidence.

5. PW-4 (Praveen), 'X's mother has corroborated her version in its entirety. She deposed that after 'X' was brought by a 'lady' to her house, she enquired from her as to what had happened. 'X' disclosed the entire facts to her and she in turn informed the police immediately. When 'X' was brought to the house, her clothes were strained with blood. In the cross-examination, she denied that on 28.10.2010 at 4.00 p.m. she had gone to the house of the accused where her sister was present. She was unaware about the name of the 'lady' who had brought 'X' to the house. No ill-will or enmity was assigned to the witness to be the motive for false implication.

6. The Ocular testimony of the prosecutrix has been corroborated by medical evidence. She was medically examined vide MLC (Ex.PW-5/G). 'X's hymen was found torn. The appellant was named in the alleged history recorded in the MLC. As per FSL report (Ex.PW-5/H) human 'semen' was detected on exhibit 16 (underwear). Blood was detected on exhibits 1a (lady's shirt), 1b (salwar), 15a (salwar)

and 15b (lady's shirt). Detection of 'semen' on exhibit 16 (underwear) lends credence to the prosecutrix version.

7. Certain discrepancies, improvements and infirmities pointed out by the learned counsel for the appellant are not material to affect the core of the prosecution case. The prosecutrix was ravished by the appellant in his house where she was taken on the pretext that his sister was calling her. 'X' had no reasons to falsely implicate the appellant and to spare the real offender to go scot free.

There is uncertainty as to the exact age of the prosecutrix. PW-4, 'X's mother did not produce any birth certificate or school certificate of the prosecutrix to show her exact date of birth. In fact, none of the prosecution witness was able to tell the exact date of birth of the prosecutrix. In her statement (Ex.PW-2/A), 'X' disclosed her age 12 years. During trial, ossification test to ascertain her age was conducted and as per ossification report, her age was determined in between 15 to 16 years. There is thus merit in the appellant's plea that conviction under Section 376 (2) (f) was not permissible as the prosecution was unable to establish with certainty that 'X' was below 12 years of age on the day of crime.

8. The appellant did not claim that 'X' was a consenting and willing partner in the crime. There is complete denial of any such sexual act by the appellant with the victim. Under these circumstances, even if her age is taken as 16 or above it, it does not affect the prosecution case. Apparently, 'X' was not a consenting party. She was allured by the appellant to his house and taking advantage of her immaturity and innocence, the appellant established physical relations with her against her wishes.

9. The impugned judgment has discussed all the relevant aspects and is based upon fair appraisal and appreciation of evidence and needs no intervention.

The appellant was awarded minimum sentence of ten years as conviction was under Section 376 (2) (f) IPC considering the 'X's age as 12 years. Even in the charge, the age of the prosecutrix was given as 15/16 years. Nominal roll dated 12.03.2015 reveals that the appellant aged 22 years has undergone four years, four months and one day incarceration besides remission for nine months and four days. He is not involved in any other criminal case and is not a previous convict. During interim bail from 14.12.2013 to 24.12.2013 he did not misuse the liberty. Considering these circumstances, the Sentence Order is modified to the extent that

substantive sentence under Section 376 IPC shall be eight years. Other terms and conditions of the sentence order are left undisturbed.

10. Appeal is accordingly disposed of. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

**(S.P.GARG)**  
**JUDGE**

**JULY 21, 2015**

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