

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
RESERVED ON : 1st SEPTEMBER, 2015
DECIDED ON : 15th SEPTEMBER, 2015

+ CRL.A. 1055/2013
PREM SINGH Appellant
Through : Mr.Sitab Ali Chaudhary, Advocate.
versus
STATE (NCT OF DELHI) Respondent
Through : Mr.Amit Ahlawat, APP.

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

S.P.GARG, J.

1. Present appeal is directed to impugn a judgment dated 17.07.2012 in Sessions Case No. 235/09 arising out of FIR No.241/2009 PS Sultanpuri by which the appellant – Prem Singh was held guilty for committing offences under Sections 376/506 IPC. By an order dated 20.07.2012, he was awarded RI for ten years with fine ₹ 20,000/- under Section 376 IPC and RI for two years with fine ₹ 5,000/- under Section 506 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case in the charge-sheet was that in between 14.08.2008 to December, 2008 at various places including A-158, Raj Park, Sultan Puri, and Rajiv Gandhi Cancer Hospital, the appellant committed rape upon the prosecutrix 'X' (Assumed name) aged around 13 years and also criminally intimidated her. Information about the

sexual abuse was reported to the police on 04.07.2009. Investigating Officer after recording X's statement (Ex.PW-2/A) lodged First Information Report. 'X' was medically examined; she recorded her statement under Section 164 Cr.P.C. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent for examination to Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed in the Court. The prosecution examined seventeen witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication; no defence evidence was produced. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. Victim 'X' was aged around 13 years when she was ravished for the first time on 14.08.2008. PW-14 (Ajay Kumar), Sub-Registrar, Death and Birth, Nangloi, proved X's birth certificate (Ex.PW-14/A) where her date of birth was registered as 29.12.1995. No suggestion was put to the prosecution witnesses if 'X' was more than 16 years on the day of incident. No sound reasons prevail to disbelieve the date of birth recorded in Ex.PW-14/A as X's parents never anticipated such an

unfortunate incident to happen in future to manipulate her age that time. Statement (Ex.PW-2/A) forming basis of FIR and MLC (Ex.PW-7/A) record her age as 14 years. In her Court deposition, 'X' disclosed her age 15 years on the day of her examination on 16.04.2010. Apparently, she was below 16 years and even her consent to have physical relations with the appellant was of no consequence.

4. On scrutinising the statements of the prosecution witnesses, it stands established that 'X' was a willing and consenting party throughout to have physical relations with the appellant. Both were neighbours and acquainted with each other. They used to remain in regular touch with each other on mobiles. On the day of incident i.e. 14.08.2008, 'X' visited appellant's house to collect certain old newspapers where physical relations took place. In the statement (Ex.PW-2/A) given to the police at the first instance, 'X' gave detailed account as to how and under what circumstances, physical relations were established by the appellant in his house on 14.08.2008. She further informed that on two other occasions also, she was sexually assaulted. She further informed that the accused had taken her nude photographs and used to criminally intimidate her. In 164 Cr.P.C. statement (Ex.PW-1/B), the prosecutrix reiterated her version given to the police and implicated the appellant for sexual abuse. In her

Court statement as PW-1, she deposed that when she had gone at the appellant's residence to collect old newspapers, she was sexually abused after administering 'something' in a drink. After consuming it, she became unconscious. In the cross-examination, she revealed that the accused was 'alone' in the house that time. Needless to say, complete and entire version given by 'X' to the police in her statement (Ex.PW-2/A) and the one recorded under Section 164 Cr.P.C. has not been proved. She omitted to testify if on any other occasion too either at Rajiv Gandhi Cancer Hospital or in a lady's house, rape was committed upon her. Certain discrepancies have emerged in her statements recorded at various stages of the investigation / trial. She made improvement in Court Statement alleging that physical relations were made after administering 'something', as a result of which, she became unconscious.

'X' was, however, certain and categorical to depose that the appellant established physical relations with her first time in his house when she had gone there to fetch old newspapers. No sound reasons exist to disbelieve the statement of the child witness on this aspect. She had no ulterior motive to level serious allegations of rape against an acquainted with whom there was no history of previous enmity or hostility. As observed above, seemingly being a consenting party, she never lodged any

complaint against the appellant to her parents or any authority. She did not raise alarm or protest at the time of occurrence and did not suffer any visible injuries on her body. She remained mum for months together despite being defiled on other occasions till December, 2008. The incident came to light when X's parents suddenly found certain uncalled for 'missed calls' in her mobile. When confronted, she admitted to have physical relations with the appellant. PW-2 (Mamta), X's mother elaborated in her examination-in-chief that on enquiry from 'X' about 'missed calls', she informed that the appellant had established illicit relations with her in his house in 2008 and also on two or three other occasions 'X's parents were quick to put the police machinery into motion. Delay of about seven months, thus, does not absolve the appellant's guilt as 'X' being below 16 years was incapable to give consent for physical relations. It is apt to note that the appellant aged around 37 years had sufficient maturity to understand the consequence of having physical relations albeit with consent with a child aged around 13 years.

5. X's statement has been corroborated in material particulars by PW-2 (Mamta), her mother; PW-3 (Rajesh Kumar) and PW-5 (Jagdish Jain). PW-8 (Nazma Khan), Counsellor from an NGO, has also

supplemented her version. Medical evidence is also not at variance. On 04.07.2009, 'X' was medically examined by PW-7 (Dr.Surekha) vide MLC Ex.PW-7/A; her hymen was found torn. In the alleged history recorded therein 'X' named the appellant to have sexually assaulted her. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him. He failed to explain as to in what context and for what purpose, he used to remain in touch with the prosecutrix on her mobile.

6. Delay in lodging the FIR is not fatal in the instant case as the prosecutrix was possibly a consenting party and her parents were not aware about the objectionable relations between the two. After finding unusual 'missed calls' in the mobile of the prosecutrix, they became suspicious and without wasting any time lodged First Information Report. 'X', a school going child, victim of sexual abuse at the hands of rapist of the age of her father had no reasons to level false allegations of rape to put her honour at stake. When she was confronted by her parents, she had no option but to divulge the truth. Apparently, she continued to suffer in silence as it involved her prestige as well as prestige of her family. She had no courage on her own to go before the Police and lodge a report.

7. Certain discrepancies and minor embellishments in her statement are inconsequential as they do not affect the core of the prosecution case whereby the appellant had established physical relations with a minor child. Conviction under Section 376 IPC based upon fair appreciation of evidence cannot be faulted. Since 'X' was a consenting party, there was no possibility of the appellant extending threats to her to criminally intimidate her. Conviction under Section 506 IPC cannot be sustained and is set aside.

8. The appellant was sentenced to undergo RI for ten years with fine ₹ 20,000/- under Section 376 IPC. Nominal roll dated 05.08.2013 reveals that he has already undergone four years and twenty-nine days incarceration besides remission for three months and three days as on 05.08.2013. It further reveals that he is a first time offender and is not involved in any other criminal case. His overall jail conduct is satisfactory. Sentence order records that he has studied upto BA (Second Year) and was doing computer hardware work. During custody in jail, he won Certificate of Appreciation and also won the Best Teacher award. He is involved in education work in jail. Aggravating circumstance is that the appellant was aged around 37 years and was unmarried. He lived in the neighbourhood of the prosecutrix; betrayed her parents' trust and abused

an innocent girl of tender age of 13 years, who was like his daughter. He exploited innocence of a school going child. Court can well understand the trauma of X's parents. 'X's silence encouraged him to indulge in sexual relations repeatedly. Sentence order records that the convict during the relevant time roamed freely and had started treating 'X' as an object to satisfy his carnal / sexual needs, available at his back and call without having even a little fear of law. Rape on a tender aged girl is bound to create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely.

9. Considering the facts and circumstances of the case and the nature of crime committed, sentence awarded by the Trial Court needs no modification except that the default sentence for non-payment of fine amount of ₹ 20,000/- would be SI for two months.

10. The appeal stands disposed of in the above terms. 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

SEPTEMBER 15, 2015 / tr