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

% *Judgment reserved on : 07.12.2015*
Judgment delivered on : 14.12.2015

+ CRL.A. 1073/2013
MAN MOHAN

..... Appellant
Through Mr.S.B.Dandapani, Advocate.

versus

STATE (GNCT OF DELHI)

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

+ CRL.A. 1397/2012
SANTOSH SHARMA

..... Appellant
Through Mr.N. Hariharan, Sr.Advocate
along with Mr.K.Kaushik,
Advocate.

versus

STATE (GNCT OF DELHI)

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

+ CRL.A. 1419/2012
PREETI AND ANR.

..... Appellant
Through Mr.N.Hariharan, Sr.Advocate
along with Mr.K.Kaushik,
Advocate.

versus

STATE (GNCT OF DELHI)

Through

..... Respondent

Ms. Kusum Dhalla, APP for the
State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are four appellants before this Court. These appeals have been filed impugning the judgment and order on sentence dated 16.11.2012 and 30.11.2012 respectively wherein the appellant Man Mohan stands convicted under Sections 342/376/506 of the IPC. He has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1 lac which amount, by way of compensation has to be paid to the victim and in default of payment of fine, to undergo SI for a period of 6 months for his conviction under Section 376 of the IPC. For his conviction under Section 342 of the IPC, he has been sentenced to undergo RI for a period of one year. For his conviction under Section 506 of the IPC, he has been sentenced to undergo RI for a period of one year. Appellants Vinod, Preeti and Santosh Sharma have been convicted under Section 363 read with Section 365 of the IPC and each of them

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has been sentenced to undergo RI for a period of three years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo SI for 15 days each.

2 Nominal roll of the appellants has been requisitioned. Nominal roll of the appellant Man Mohan reflects that as on date, he has undergone incarceration of 4 years. Nominal roll of other appellants namely Vinod, Preeti and Santosh Sharma reveal that before they have been enlarged on bail, they have undergone incarceration of 9-10 months.

3 The version of the prosecution was unfolded pursuant to a sting operation conducted on 01.09.2007 by the IBN 7 News Channel and this operation was conducted at house No. 157-158, M Block, JJ Colony, Shakurpur. This was the office of a placement agency running under the name and style of Adivasi Sewa Samiti. This placement agency was being run by the husband-wife duo i.e. Vinod and Preeti. The reporter of News Channel Siddharth Gautam (PW-17) on reaching the location reveals an information of rape on a minor has been committed in the aforesaid placement. Police was informed. Criminal law was set into motion. WSI Raj Bala (PW-25) interrogated the prosecutrix 'S' (PW-1)

who was found there. Her statement was recorded. She revealed that she had come from Jharkhand and was taken to this placement agency as she was in search of a job. About 9-10 months ago when she was returning home at 03:00 pm, one boy had committed rape upon her in the bushes. Due to fear and shame, she had not disclosed the incident to anyone. She had also become pregnant. On 13.08.2007, she had given birth to a male child; she had been informed that the child was dead. It was later on revealed that this child had been sold by appellant Santosh Sharma to one Reena for a consideration of Rs.23,000/-. This was in complicity with appellants Vinod and Preeti. Man Mohan was the person who had committed rape upon her.

4 The accused persons were arrested. The prosecution in support of its case had examined 25 witnesses of whom the star witness was the prosecutrix herself who had been examined as PW-1. PW-1 had been brought to Delhi by Pallo Sirka (PW-2) who had taken her to the placement agency of appellant Vinod and Preeti. PW-1 worked in the house of Sulekha (PW-14). The husband of PW-14, Vijay was examined as PW-18. The other public witness Kiran Batra (PW-13) had deposed that the prosecutrix was working in the house of his friend (PW-18).

Avinash (PW-19) was the son of the landlord of the premises which had been tenanted to the placement agency which was being run by Benjamin and in his absence by appellant Vinod and Preeti. After leaving their employment, PW-1 instead of returning to her village (which was the plea taken by her while leaving the employment of PW-14,) took up employment with Sangeeta Khanna (PW-15). On PW-15 learning about the pregnancy of the victim, the victim left the place. The child was delivered through the mid-wife Basanti Devi (PW-16). Further deposition of PW-16 revealed that the child born out of the prosecutrix had been handed over in her presence by appellants Vinod and Preeti to appellant Santosh Sharma.

5 The medical witnesses were three doctors i.e. Dr. Sanjay (PW-6), Dr. Shipra Rampal (PW-7) and Dr. Shakuntala (PW-8). The bony age of the victim was proved through Ex.PW-7/A opining her age between 18-19 years. The DNA analysis of the child born out of the victim was conducted by Dr. A.K. Shrivastav (PW-11); it was proved through the DNA that the father of the child was appellant Man Mohan. Even before this Court, this is an admitted position and appellant Man Mohan has not disputed this fact at any stage. The role attributed to appellants Vinod, CrI. Appeal Nos.1073/2013, 1397/2012 & 1419/2012

Preeti and Santosh Sharma was that they had in conspiracy with one another sold the child of the victim for a consideration and the child was finally recovered from Veena. Veena was however not examined.

6 In the statement of the accused recorded under Section 313 of the Cr.PC, all of them have stated that they have been falsely implicated in present case. No evidence was led in defence.

7 In view of the aforementioned evidence, both oral and documentary evidence adduced before this Court, the appellants were convicted and sentenced as aforementioned.

8 On behalf of appellant Man Mohan, the learned amicus-curiae has drawn attention of this Court to the version of the prosecutrix. Submission is that she is not a credible witness and no reliance should have been placed upon her version. She was admittedly an adult. This has come in her version on oath as also opinion of the doctor who had conducted the bony age upon her. Submission is that there are three statements which were given by the prosecutrix. Her first statement was dated 02.09.2007 followed by another statement delivered by her on 05.09.2007. She did not name the appellant Man Mohan in both these statements. Her third statement was recorded by the learned Magistrate

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1- ½ months later on 26.10.2007 where for the first time, the appellant Man Mohan was named. Submission being that although it is an admitted fact that the child was born out of the co-habitation of the appellant Man Mohan with the prosecutrix but this is a clear case of consent. The victim was working as a maid servant where appellant Man Monhan was also employed as driver since the last 4 years. The victim not having reported the matter to the police till the time when a sting operation was conducted clearly shows that she had no grievance against him and she had entered into this relationship with him voluntarily. Learned counsel for appellant Man Mohan has placed reliance upon a judgment of the Apex Court reported as AIR 2012 SC 2281 Narender Kumar Vs. State (NCT of Delhi) to substantiate his submission that the prosecution must prove its case to the hilt and the Court must appreciate the evidence in totality in the background of the entire case and not in isolation. The Trial Judge has committed illegality in relying upon the version of the prosecutrix to nail the appellant. Benefit of doubt must accrue in favour of the appellant and he is entitled to a consequent acquittal.

is pointed out that there is no evidence qua them. Attention has been drawn to the cross-examination of PW-1, PW-2 as also to the deposition of PW-16; submission being that the evidence before the Court clearly negatives the fact that the child of the prosecutrix had been sold for a consideration; the victim has herself in clear words admitted that she did not want to keep the child because the child was born out of the wedlock and she was ashamed of this fact. It was a voluntary giving away of the child by the prosecutrix. These admissions in these versions of the witnesses have been illegally ignored by the Trial Judge. Benefit of doubt accrues in their favour also.

10 Needless to state that these arguments have been refuted.

11 Arguments have been heard. Record has been perused.

12 The star witness of the prosecution is the prosecutrix herself. She is admittedly an adult. She was more than 18 years of age on the date of the incident. She has deposed that she was a resident of Village Karakhujria where she was living with her siblings. She had come to Delhi looking for a job. She worked in the house of Vijay sir. Appellant Man Mohan was driver of Vijay. He had committed rape upon her two times. He first committed rape and he repeated the act 1- ½ months later.

She became pregnant. She left the job without disclosing this fact to her employer. Her male child was born in the house of appellant Vijay at Shakurpur. Appellant Vijay and Preet had given the child to someone else on the date of delivery. PW-1 had again taken employment. She told her employer about this fact. Police was informed. She was taken to Nari Niketan. The nurse had told her that she had given birth to a dead child. It was later on revealed that her child had been sold to Beena or Veena for a consideration of Rs.23,000/-.

13 The witness was subjected to a lengthy cross-examination by the learned Public Prosecutor as she had not toed the line of the prosecution. She admitted that TV persons had come to the house of appellant Vijay and at that time, she had learnt that her child had been sold for a consideration. She admitted that that her statement under Section 164 of the Cr.PC was recorded by the learned Magistrate. She was subjected to a lengthy cross-examination by the counsels for all the appellants. She admitted that the incident of rape had taken place in the bushes but she had made this statement on the instructions of appellant Man Mohan. She had stated about the incident of rape for the first time to the police officer of PS Shakurpur when the TV persons had inquired from her.

She had not disclosed this fact to any person when she was on her way back to Ranchi. She was un-married and she had become pregnant and that is why she did not want any person to know about this fact. She admitted that in her statement she had stated that she did not want to keep her child after birth and this fact was told by her to appellant Vinod. This witness was confronted with her earlier statement which had been recorded (Ex.PW-1/DA) wherein it had been noted that she voluntarily stated that she wanted to give the child to Vinod bhaiya. She admitted that in the statement of her recorded on 10.09.2007 (Ex.PW-1/DB) which was also confronted to her wherein she also stated that she wanted to give her child voluntarily out of her own sweet will and she was willing to give the child to a lady who was ready to look after her child. She had voluntarily handed over her child. She also admitted that during the time when she was pregnant, appellant Vinod provided her food and both Vinod and Preeti looked after her. She admitted that she learnt the sale of her child only when the TV persons had come to the placement agency.

14 This version of PW-1 has been highlighted by the learned counsel for all the appellants to substantiate their respective arguments.

15 Before adverting to the testimony on oath of PW-1, it would be relevant to note that the sting operation had been conducted by the IBN 7 New Channel on 01.09.2007. This sting operation was related to information having been received by the news channel that minor girls are brought from out station; they are put into prostitution and are made pregnant for the illegal sale of children and it was to un-earth this racket that this sting operation was conducted.

16 The first statement of the prosecutrix was recorded on 02.09.2007. Relevant would it be to note that in this entire version of the prosecutrix, there is no mention of illegal rape having been committed upon her by Man Mohan. Rape had been committed upon her in the bushes by an unknown person. In this statement, the victim has stated that she was told by appellant Vinod, Preeti and Santosh Sharma that her child was born dead and it was finally learnt that her child was sold for a consideration wherein earlier she had been informed that her child had been born dead. This statement was proved as Ex.PW-1/DB.

17 Learned counsel for appellant Man Mohan rightly points out that at this point of time, the victim was under the cover of an NGO; it was the police who was recording her statement; she had no fear or

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apprehension; her not informing the police about the forceful act of rape having been committed upon her clearly shows that she had no grievance against appellant Man Mohan.

18 Another version of the prosecutrix was recorded on 05.09.2007. Her third statement was recorded under Section 161 of the Cr.PC on 10.09.2007 (Ex.PW-1/DB). In both these statements also, there was no mention that appellant Man Mohan had committed any illegal act upon her. Her statement under Section 164 of the Cr.PC was subsequently recorded on 26.10.2007. This was 1- ½ months after her first statement. It was in this statement that the prosecutrix had named appellant Man Mohan as the man who had committed rape upon her. Her narration on oath in Court is largely a corroboration of this version.

19 A scrutiny of this evidence shows that the victim had come to Delhi in search of job and was working in the house of Vijay Kumar (PW-18) where Man Mohan had been employed as driver since the last 4 years. They had developed friendship. Her version being that about 9-10 months before, the incident of rape had been committed upon her by Man Mohan. Thereafter, she did not allow Man Mohan to come during lunch hours where when he used to come for lunch. She reiterated that

1- ½ months later, he again committed rape upon her. She learnt that she had become pregnant; she left the job. Relevant would it be to note that it is not the version of the prosecution that this fact was disclosed by her either to her employer (PW-18) or to his wife (PW-14). Version of PW-14 and PW-18 is that 1- ½ months later, the prosecutrix had left their house without informing them. They did not know that she was pregnant. Further deposition of PW-1 reveals that the prosecutrix went back to the placement agency where Vijay learnt that the PW-1 had become pregnant. PW-2 who had initially brought PW-1 to Delhi agreed to take her back to the village and PW-2 was ready to accompany her back to the village. Deposition of PW-1 and PW-2 being that the prosecutrix instead of returning home, come back to Delhi and started working in the house of her new employer (PW-15). Even at that point of time, PW-1 did not reveal this incident to PW-15. As rightly pointed out by the learned counsel for appellant Man Mohan there was ample opportunity at all these stages with the victim to have disclosed the illegal act of rape having been committed by Man Mohan either to her first set of employers (PW-14 and PW-18) or even to her second employer (PW-15). Nothing really deterred her from doing so. However,

she chose not to do so. She also continued with her pregnancy. While the prosecutrix worked in the house of PW-15, PW-15 noted this pregnancy and she asked PW-1 about it. Version of PW-15 is that at that time, the prosecutrix disclosed to her that while she was travelling in a train, somebody had committed rape upon her; this was while going in a train. Even at this point of time, the version of the prosecutrix was not that Man Mohan had committed rape upon her.

20 Record further reveals that PW-1 then returned to the placement agency where even as per the admission of PW-1 the appellants Vinod and Preeti had looked after and given her adequate food and nutrition. Her baby had been born in the placement agency of appellant Preeti and Vinod on 13.08.2007. Deposition of PW-1 being categorical that she had given permission to Vinod to give her child to a lady who was willing to look after the child as she was ashamed of this act and she did not want it to be disclosed to her father as her father would beat her. Her version was that her father would kill her if he knew about her unwed relationship.

21 This version of PW-1 clearly reflects that the victim was fearful and apprehensive that if her parents learnt about her pregnancy, they

would kill her. She had, however, not aborted the child. She wanted to give her child to any person who was willing to adopt her. The fact that her child was healthy when he was born is clear from the testimony of PW-16 who was the mid-wife. PW-16 deposed that the child who was delivered in her presence in the placement agency was handed over to PW-1 after she had given a bath to the newly born child. PW-16 had put the baby in the lap of the prosecutrix who had handed over the child to Vinod and Preeti. In one part of her deposition, PW-16 has stated that the child had been given to Santosh Sharma in her presence and this appears to be a voluntary act of PW-1. In another part of her testimony, PW-16 also admitted that she was also childless and she had asked PW-1 to give this child to her but this could not work out.

22 Learned counsel for appellants Vinod, Preeti and Santosh Sharma has rightly pointed that reading of entire version of PW-16 shows that she was nursing a grudge against PW-1 as she wanted to adopt the child being childless lady but was not allowed to do so. The fact that the child was a healthy child and born in her presence is well borne out from the version of PW-16 and thus what has come on record is that PW-1 was fully aware that her child was healthy. After giving a bath to the child,

PW-1 had handed over the child to appellant Vinod and Preeti who in turn handed over the child to Santosh Sharma. PW-1 admitted that out of fear and shame, she did not want to keep the child and she had asked Vinod bhaiya to give the child to any lady who was willing to take him. Further version of PW-1 being that appellants Vinod and Preeti had looked after her during the time when she was pregnant and had given her adequate food and nursed her other requirements.

23 This evidence as foretold clearly shows that the relationship between the prosecutrix and appellant Man Mohan was a consent relationship. The victim was an adult. She knew the repercussions of her act. She was working as a maid servant in the house of her employer where appellant Man Mohan was also working as a driver. It was not a one-time rape which was committed. Even as per the prosecutrix, this was done two times and the first incident was around January, 2007. She did not relate the incident to anyone. She had given three successive statements prior to her statement recorded on 26.10.2007 i.e. on 02.09.2007, 05.09.2007 and 10.09.2007. In none of these statements, she had attributed any role to appellant Man Mohan. There was no pressure or coercion upon her at all these times. It was on a sting

operation which was conducted and it was when PW-1 was under police surveillance that her statements were given to the police. She had several opportunities to disclose these facts. She did not do so. She did not disclose to anyone about the alleged offensive act of appellant Man Mohan i.e. either to her first set of employers (PW-14 & PW-18) or even to her second employer (PW-15). Even on a specific query put to PW-15 as to how she had become pregnant, she had told her she had been raped by a person in a train. Even at this point of time, PW-1 did not say anything about appellant Man Mohan. Although the learned Public Prosecutor has vehemently pointed out that it was out of emotions of shame and fear that PW-1 did not reveal the incident to anyone yet this Court is not willing to accept this submission as it was not as if the family members of the victim were around her; she was fearful and apprehensive from them and not from strangers. The fact that she was pregnant and she did not abort the child is also an admitted position.

24 The offence of rape is not made out. Conviction of appellant Man Mohan under the aforementioned provisions of law i.e. under Sections 376/342/506 is not made out. Benefit of doubt has to accrue in his

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favour. He is entitled to an acquittal. He is accordingly acquitted.

25 Qua the role of appellants Vinod, Preeti and Santosh Sharma, no case is made out against them also. They have been convicted under Section 363 read with Section 365 of the IPC. The version of the prosecution that they had in complicity with one another sold the child of the victim against her wishes is wholly negated by the admissions of PW-1 and which have been discussed supra and at the cost of repetition are to the effect that appellants Vinod and Preeti looked after her during her pregnancy; they provided her adequate food and nutrition; she had told Vinod bhaiya to handover the child who was born on 13.08.2007 (PW-16 has admitted that he was a healthy child) to any lady who was willing to look after her child as she was ashamed of being an unwed mother. She had volunteered these submissions and the versions confronted to her (Ex.PW-1/DA and Ex.PW-1/DB) are adequate evidence on this count. Her submission that she had learnt that her child was a dead child and had been sold for a consideration of Rs.23,000/- by Vinod and Preeti is not borne out. This was never her case. The fact that this is a lie is clear from the statements of the prosecutrix (PW-1) and PW-16 who was the mid-wife and who has

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stated that PW-1 had delivered a healthy child and PW-16 put the child in the hands of PW-1 after she had given birth to the baby.

26 The prosecution has failed to prove its case against appellants Vinod, Preeti and Santosh Sharma as well. They are also entitled to a benefit of doubt and a consequent acquittal. They are accordingly acquitted.

27 Appeals are allowed in the above terms.

28 Appellants be released forthwith, if not required in any other case.

29 Copy of this order be sent to Jail Superintendant for compliance.

INDERMEET KAUR, J

DECEMBER 14, 2015

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