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

RESERVED ON : SEPTEMBER 16, 2015
DECIDED ON : SEPTEMBER 24, 2015

+ **CRL.A.1200/2013**

STATE

..... Appellant

Through : Mr.Ashok Kumar Garg, APP.
versus

KAPIL

..... Respondent

Through : None.

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

S.P.GARG, J.

1. The instant appeal preferred by the State under Section 377 Cr.P.C. for enhancement of sentence awarded to the respondent has been contested by him.

2. Briefly stated, the allegations against the respondent in the charge-sheet were that on 16.08.2012 at around 8:30 p.m. after kidnapping the prosecutrix 'X' (assumed name), aged around 16 years from the lawful guardianship of her parents from House No.548, Naraina Village, New Delhi, he committed rape upon her at Amritsar. On 16.08.2012, 'X' left her house at 8.30 p.m. to return shortly but did not come back. Her parents searched her at various places but in vain. Finally, her father

lodged complaint (Ex.PW-3/A) and the Investigating Officer registered FIR under Section 363 IPC. After the prosecutrix and the appellant returned to Delhi, 'X' was medically examined and her statement under Section 164 Cr.P.C. was recorded. Section 366/376 IPC were added. The accused was arrested. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the court. The prosecution examined four witnesses including the prosecutrix and her parents. Thereafter, the appellant opted to plead guilty to the charge. After considering the evidence on record and the plea of guilt, the Trial Court by the impugned order convicted the appellant for commission of offences under Section 363/366/376 IPC in Sessions Case No.69/13, arising from the FIR No.129/12 registered at Police Station Naraina. By an order dated 18.02.2013, the appellant was sentenced to undergo sentence for the period already spent by him in custody. Aggrieved by the said orders, State has filed the instant appeal for its enhancement.

3. In her Court statement as PW-2, the prosecutrix exonerated the appellant completely for kidnapping her or to have established physical relations with her against her wishes. She was categorical to say that on 16.08.2012 at around 7/7:30 p.m. she had met the appellant. They

both wanted to marry. Thereafter, from the house of her friend Aditi, they hired an auto-rikshaw and went to Bus Terminal. From there, they boarded a bus to Amritsar and reached there the next day at around 11:00 a.m. or 11:30 a.m. They stayed in a hotel for two days where physical relations were established with her consent. On 19.08.2012, she got a call from her father who assured to perform their marriage. On return to Delhi on 20.08.2012, she went to her mausi's house. Her father brought her back and the appellant to the Police Station. In the cross-examination she disclosed that the statement recorded before the Magistrate under Section 164 Cr.P.C. was under pressure from her parents. She further claimed that she was aged around 18 years on the day of her examination i.e. 18.02.2013.

4. Apparently, it is a case of elopement with consent. Both the appellant and the prosecutrix were in love and wanted to perform marriage. For that purpose in mind, they had gone together to Amritsar where physical relations took place. The prosecutrix was a student of Xth standard whereas the appellant aged around 20 years was a student of XIth standard. The appellant suffered conviction as 'X' was below 16 years on the day of incident and her consent for physical relations with the appellant was of no relevance.

5. Conflicting versions about the exact age of the prosecutrix have emerged on record. Her date of birth (22.02.97) in school record was admittedly on the basis of an affidavit furnished by her father. Admittedly, no birth certificate of the prosecutrix showing her exact age was produced at the time of seeking her admission in the said school. In the document (Ex.PW2/D1), 'X' claimed that she was of 18 years as she had failed in VIIIth and Xth standards. PW-3 (Subodh Kumar), her father, did not give her exact age in the complaint (Ex.PW-3/A). In his Court statement, he disclosed her date of birth as 17.02.1997. The exact age of the prosecutrix on the basis of cogent material has not been established to conclude that she was definitely below 16 years on the day of incident.

6. The Trial Court while awarding lesser sentence has noted adequate and special reasons. The appellant aged around 20 years had remained in custody for about six months; he was a student of XIth standard. His further detention in jail with other criminals was to affect his career adversely. 'X' herself was a consenting party throughout. In my view, considering the peculiar facts and circumstances of the instant case, no illegality or material irregularity was committed by the Trial Court to award sentence less than the one prescribed under Section 376 IPC. An 'affidavit' dated 18.02.2013 of the prosecutrix is on record

where she had claimed to have attained majority and expressed her willingness to marry the appellant. The Trial Court apparently was of the view that the appellant's release from custody would enable both lovers to unite together. In *Ravinder vs.State of Madhya Pradesh* AIR 2015 SC 1369, the Supreme Court held that under proviso to Section 376 (2) IPC, the legislature has empowered the Court to award lesser sentence where 'adequate and special reasons' exist. In the said case after taking into consideration various circumstances whereby the prosecutrix and the accused had entered into a compromise and the prosecutrix did not want to proceed with the case against the accused and wanted it to close, lenient view was taken and the sentence was reduced to the period already undergone by the appellant therein.

7. In view of the above discussion, I find no merit in the appeal filed by the State for enhancement of sentence awarded by the Trial Court. The appeal is dismissed.

8. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be sent to Superintendent Jail also.

(S.P.GARG)
JUDGE

SEPTEMBER 24, 2015/sa