

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

**RESERVED ON : 5th MARCH, 2015
DECIDED ON : 11th MARCH, 2015**

+ CRL.A. 1451/2014

SUDHIR PASWAN Appellant

Through : Mr.Chetan Lokur, Advocate.

VERSUS

THE STATE (GOVT. OF NCT), DELHI Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 02.07.2014 in Sessions Case No. 22/2012 emanating from FIR No. 346/2011 PS Burari by which the appellant – Sudhir Paswan was held guilty for committing offences under Sections 363/366/376 IPC, the instant appeal has been preferred by him. By an order dated 02.07.2014, the appellant was awarded RI for ten years with fine ₹ 5,000/- under Section 376 IPC and RI for seven years with fine

₹5,000/- under Section 366 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 05.11.2011 at about 03.00 P.M., the appellant kidnapped prosecutrix 'X' (assumed name) from the lawful guardianship of her parents with an intention to forcibly marry her. He took 'X' to various places and committed sexual assault upon her. Missing person report was lodged vide Daily Diary (DD) No.19A (Ex.PW-18/A) at 13.45 hours on 12.11.2011 at PS Burari. Efforts were made to find out 'X'. Finally, she was recovered in the company of the appellant at Mujjafarpur on 17.11.2011. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. and she was medically examined. Statements of the witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellant in the Court. The prosecution examined eighteen witnesses to establish the appellant's guilt. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded that 'X' had accompanied him with free consent and they were in love. No evidence in defence was adduced. The trial resulted in his

conviction. Being aggrieved and dissatisfied, the appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Findings of the Trial Court reveal that 'X' was a consenting party throughout. However, her consent was inconsequential she being below sixteen years of age. On perusal of the evidence of the relevant witnesses including that of 'X', it stands established that 'X' and the appellant were acquainted with each other prior to the incident. Admitted position is that the appellant used to have frequent visits to X's house along with her cousin. The appellant lived in the vicinity of the prosecutrix and used to call her parents as 'Mausi' / 'Mausa'. 'X' accompanied the appellant on 05.11.2011 in a car and was taken to various places. As per her testimony, she was first taken to the appellant's sister's house. After that, they both went to a temple and the appellant married her in the presence of a Pandit. The accused took her to village Karjolia in a vehicle at the residence of his uncle. Thereafter, she was taken to a village at the residence of her Mausi's daughter. 'X' stayed with the appellant for about 4 / 5 days in all. At no stage, she raised any hue and cry regarding her forcible abduction or kidnapping. Physical relations were established during this period. At the time of medical examination,

‘X’ was found pregnant and the pregnancy was terminated subsequently. No injury on her body was noticed in the MLC. The accused was not armed with any weapon to cause apprehension in her mind or to scare her. From all these circumstances, it can safely be inferred that ‘X’ was a consenting party throughout and the findings of the Trial Court on that score cannot be faulted.

4. To infer appellant’s guilt, age of the prosecutrix is relevant. Prosecution case from the very inception is that ‘X’ was aged about twelve and half years at the time of incident. In her deposition as PW-1, she disclosed her age as twelve and half years on the day of incident. She denied that she was above eighteen years of age. The prosecution examined PW-8 (Ms.Anita Sharma), Teacher, Nigam Pratibha School, Sant Nagar, Delhi, where ‘X’ was admitted in class 1(C) on 04.08.2005 vide admission No. 7808 and her date of birth recorded was 15.02.2000. Photocopy of the relevant entry of admission register is Ex.PW-8/A; Photocopy of the admission form is Ex.PW-8/B and that of affidavit of the X’s mother is Ex.PW-8/C. There are no valid reasons to disbelieve the age of the prosecutrix as recorded in the school certificate. X’s parents had not anticipated the incident to occur and to manipulate her date of birth in 2005. The appellant did not furnish any document to prove his claim that

‘X’ was above eighteen years of age. Being a student of 7th Class Standard she was not expected to be of more than eighteen years of age. PW-2 (Vinod Dass), X’s father disclosed her date of birth as 15.02.2000. He deposed that his marriage took place in the year 1997. ‘X’ was born after about two years of the marriage and she is the eldest child. Similar is the testimony of PW-3 (Smt.Kamla), X’s mother. Apparently, ‘X’ was below fifteen years of age on the day of incident and her consent to accompany the appellant and to have physical relations with him was immaterial. It was no consent in the eyes of law. ‘X’ being a child was unable to understand the consequences of her consent to accompany the appellant without informing her parents at far away places. Not only that, during her stay with the appellant, he established physical relations with her on various occasions. The appellant did not bother to inform X’s parents about her whereabouts. No sound reasons exist to disbelieve or suspect the testimony of the prosecutrix whose deposition is consistent throughout. Obviously, it is a case of elopement with consent but consent by a child aged below fifteen years is of no relevance and the appellant cannot escape his guilt on that score.

5. The impugned judgment based upon fair appreciation of the evidence requires no interference. Since the child below twelve years was

sexually assaulted and was made pregnant, the appellant deserves no leniency except that the default sentence for non-payment of fine ₹10,000/- shall be Simple Imprisonment for ten days in all.

6. 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

MARCH 11, 2015 / *tr*