

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

Judgment Reserved on: August 10, 2016

% *Judgment Delivered on: October 19, 2016*

+ CRL.A. 398/2000

IMRAN

..... Appellant

Represented by: Mr. M. Shamikh, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Kewal Singh Ahuja, APP
with Insp. Birender Singh PS
Shahdara.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Imran challenges the impugned judgment dated May 22, 2000 convicting him for offence punishable under Section 376 IPC and the order on sentence dated May 26, 2000 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹200/- for offence punishable under Section 376 IPC. By the aforesaid impugned judgment Mohd Ali, Rahisa, Sakina and Rani were acquitted of the charges against them but Yusuf was convicted along with Imran. Crl A. No. 329/2001 filed by co- convict Yusuf was dismissed as infructuous on December 10, 2007 as he had already undergone the period of sentence. Thus, this Court is only concerned with the present appeal of Imran.

2. Assailing the conviction, learned counsel for Imran contends that the testimony of the prosecutrix was found to be totally unreliable, thus

conviction under Section 376 IPC cannot be based upon it. The prosecution has not been able to prove that the prosecutrix PW-11 was below 15 years of age. As per the evidence on record the prosecutrix PW-11 was above 16 years of age and in view of the finding of the Trial Court that the prosecutrix was a consenting party, the appellant is required to be acquitted.

3. Learned APP for the State on the other hand contends that with respect to the age of the prosecutrix, the school leaving certificate mentions the date of birth as May 4, 1982 and as per the bone age report submitted by PW-13, Dr. Rajpal, the age of the prosecutrix was above 14 years and below 16 years. It was further submitted that in the absence of challenge by the appellant during his examination, the same can be taken as proof of age of prosecutrix as per of the decision of this Court reported as 2010 (2) JCC 1056 Guddu v. State.

4. FIR No. 231/1996 was registered under Section 363/34 IPC at PS Shahdara on the complaint of PW-5 father of two prosecutrix who stated that on May 10, 1996 around 2:15 P.M., he had gone to call the labourers as there was construction going on in his house. When he returned around 2:30 PM, he found his two daughters (PW-11, Prosecutrix 1 and PW-12, Prosecutrix 2) missing. He enquired from his wife and searched for them. When he could not find them, he lodged a report with the police and expressed his suspicion on Imran and Yusuf @ Guddu who used to come to his house to do the electricity work. On May 12, 1996, PW-19, HC Devi Saran received an information that Imran and Yusuf were staying in a house at Kachhi Colony, Khajoori along with PW-11 and PW-12. PW-19 along with PW-3 HC Virender and PW-5 went to the aforesaid house and met a lady named Akila. Imram, Yusuf, PW-11 and PW-12 who were also present

there were brought to the police station. Yusuf and Imran were arrested. Statements of PW-11 and PW-12 were recorded under Section 164 Cr.P.C wherein they stated that four more persons namely Mohd Ali, Rahisa, Sakina and Rani also came along with Yusuf and Imran and asked them to come along with them. As a result, Mohd Ali, Rahisa, Sakina and Rani were also arrested.

5. PW-11 deposed in the Court that on May 10, 1996 when PW-5 i.e. their father had gone to call a beldar as construction of septic tank was going on in their house, she and PW-12 were at home. Yusuf, Imran, Rani, Rahisa and Shakeena came to their house. Imran and Yusuf had knives in their hand and they dragged both of them in the three-wheeler scooter parked outside their house and bundled them in the scooter. Rahisa had caught her pony tail when she was being dragged. They were threatened that they will be stabbed if they raise an alarm. They were taken to a house consisting of two rooms at an unknown place. She deposed that in one of the rooms, Khala of Imran was residing and they were kept in the other room for 2-3 days and Imran used to rape her and Yusuf used to rape her sister PW-12. During her cross examination, she stated that her date of birth was May 4, 1982. and she had studied till 5th standard at her native village Shahpur, Distt. Bulandshahr. She stated that she and her sister PW-12 knocked the door to invite the attention of the public when the accused used to be away. Khala of Imran used to come there and enquire as to why they were raising an alarm. Both of them had never told to Khala of Imran that they were kidnapped and detained there. She stated that they used to sleep on the floor and were not allowed to move. She had not gone to the terrace of the said room and she had not stated in her statement to the police or Magistrate that she had gone

to the roof of the said room where she was raped. She resiled from her statement made to the police that they were taken on foot upto DDA park from where they were made to sit in a scooter. She deposed that Imran and Yusuf were apprehended from the chowk and they had taken the police to the room from where they were recovered.

6. PW-12 deposed in sync with PW-11. She further stated that they were criminally intimidated by Mohd Ali, Rahisa, Sakina and Rani. Yusuf used to rape her and Imran used to rape PW-11. When the two of them used to raise alarm, Imran and Yusuf used to beat them. During her cross examination, she stated that Yusuf and she remained in the room and Imran and PW-11, remained at the roof of the house.

7. PW-5 father of the two prosecutrix deposed in sync with his statement made before the police.

8. PW-10, Dr. Vinita Rastogi who examined PW-11 stated that as per the MLC Ex.PW10/A, pubic hair and breast were well developed, hymen was intact and no bleeding seen, no wound or injuries on the body or stains on salwar were found and the prosecutrix was advised for bone age determination test.

9. PW-13, Dr. Rajpal Asst. Prof., Dept. of Radiology, GTB Hospital, Delhi examined the X-Ray of PW-11 for the bone age determination. As per the report Ex. PW13/A, her age was above 14 years and below 16 years. He had also examined PW-12 for the bone age determination. As per the report Ex. PW13/B. her age was also above 14 years and below 16 years.

10. As per PW-20 Sh. A.K. Srivastava Sr. Scientific Officer, FSL, Malviya Nagar, Delhi who analysed the exhibits contained in the parcels vide the report Ex. PW-20/A, human semen was detected on Ex.1a (lady's

kameez), Ex.1b- one salwar, Ex.2a and Ex.2b being two microslides having whitish smear (described as one slide containing vaginal smear of PW-11), Ex.5a and Ex.5b being two microslides having whitish smear (described as one slide containing vaginal smear of PW-12), Ex.7a (lady's kameez), Ex.7b (one salwar having dark brown stains) and Ex.7c (one underwear). The aforesaid exhibits were serologically examined by him and in his report Ex. PW-20/B, he found that blood of 'B' group was found on Ex.3 and Ex.4, the two gauze pieces with blood of Imran and Yusuf. Further the semen stains found on exhibits 1a, 1b, 7a, 7b and 7c were also of 'B' Group. Thus corroborating the version of PW-11 and PW-12.

11. Though two defence witnesses were examined by Rani to prove that she and her family members had gone out on 8th May, 1996 due to her father's bereavement but no such plea was taken either by Imran or Yusuf. From the evidence led by the prosecution particularly the statements of two prosecutrix which is duly corroborated by FSL report, this Court finds no error in the impugned judgment of conviction and order on sentence.

12. Consequently, the appeal is dismissed. Bail bond and surety bond of the appellant are cancelled. He will surrender to custody.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2016
'vn'