

\$~R-13

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

% *Judgment Reserved on: May 18, 2016*
Judgment Delivered on: May 30, 2016

+ **CRL.A. No.1015/2014**

RAMNIK YADAV

..... Appellant

Through : Mr.Dhan Mohan, Advocate with
Ms.Tanu Mishra, Advocate.

Versus

STATE

..... Respondent

Through : Mr.Kewal Singh Ahuja, APP for the
State with SI R.P. Singh, PS Dwarka.

PRATIBHA RANI, J.

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than five years and upto seven years).
2. Appellant Ramnik Yadav has preferred this appeal against the judgment dated 27.01.2014 and order on sentence dated 29.01.2014 whereby he has been convicted for committing the offence punishable under Section 376/323 IPC and sentenced to undergo RI for seven years with fine of ₹10,000/- and in default of payment of fine, to undergo SI for three months for the offence punishable under Section 376 IPC and further to undergo RI for six months for the offence punishable under Section 323 IPC.
3. Case FIR No.122/2011 under Section 363 IPC has been registered on 10.09.2011 at PS Dwarka Sector-23 on the basis of statement made by

Saraswati Devi – mother of the Prosecutrix ‘G’ (name withheld to conceal her identity). As per the FIR, she informed the police that she was working as maid servant and residing in the same building where she was working. She was also running a tea stall. She is having three children, out of them youngest one is ‘G’ – the Prosecutrix aged about 13 years who had been missing from the house since 22.08.2011 5.00 pm. She suspected the appellant Ramnik Yadav S/o Kodai Yadav R/o Village Madhopur, Angoa, Katta, Muzzafarpur, Bihar had induced her daughter. She also stated that her elder daughter Pooja had also seen her youngest daughter ‘G’ leaving with him. She tried to search her daughter but could not find, hence reported the matter to the police.

4. During investigation, on 17.12.2011 the Prosecutrix and the appellant were recovered from the native place of the appellant and brought to Delhi. Both of them were sent for medical examination. Prosecutrix ‘G’ was also produced before learned MM for getting her statement recorded under Section 164 Cr.P.C. and after completion of investigation, chargesheet was filed against the appellant.

5. After the case was committed to the Court of Session, the trial was conducted by the learned ASJ. Since School Leaving Certificate of the Prosecutrix disclosed her age to be 13 years, despite observing that the Prosecutrix had accompanied accused voluntarily and without any force or allurement, the learned Trial Court convicted the appellant for committing the offence punishable under Section 376/323 IPC and acquitted him for the offence punishable under Section 363/366 IPC.

6. The main issue arising for consideration in this case is the age of the Prosecutrix ‘G’ who on the basis of School Leaving Certificate was 13 years

old at the time of incident. Thus, as per School Leaving Certificate, she had not attained the consenting age at that time.

7. Learned counsel for the appellant has drawn the attention of this Court to the fact that the School Leaving Certificate contains the date of birth of the Prosecutrix 'G' as 01.05.1999 which was recorded on the basis of affidavit given by her father and not on any authentic record about her date of birth. Learned counsel for the appellant has submitted that PW-4 Saraswati Devi – mother of the Prosecutrix 'G' has also mentioned the age of the Prosecutrix 'G' to be 13 years but her cross examination shows that Prosecutrix 'G' was not of 13 years of age but on the verge of attaining the age of majority. He has further submitted that it was a case of love marriage against the wishes of her parents which fact is not disputed even by the mother of the Prosecutrix. The factum of leaving the house by the Prosecutrix voluntarily stands proved on record and it was due to that reason only that the appellant has been acquitted of the charges under Section 363/366 IPC.

8. Learned counsel for the appellant has submitted that the Prosecutrix 'G' in this case has been recovered from the house of the appellant where she was found sleeping. The FIR in this case has been registered after delay of 19 days despite the fact that FIR records the Prosecutrix 'G' was seen leaving home by her elder sister Pooja. The FIR also records complete particulars about the time of leaving and with whom she has left. The Prosecutrix 'G' also admits having solemnized marriage with the appellant, hence it is a case where the Prosecutrix 'G' has herself left home to marry the appellant who was known to her for past many months, hence he may be acquitted.

9. On behalf of State, it has been submitted that under Juvenile Justice Act, School Leaving Certification of the school attended by the Prosecutrix can be taken into consideration to ascertain her age. The School Leaving Certificate which has been proved by examined the teacher from the said school records her date of birth as 01.05.1999 thus on the date of leaving her house and accompanying the appellant, she was a minor. Even if the sexual act has been performed with her consent, she being below the consenting age, the offence under Section 376 IPC stands proved against the appellant beyond reasonable doubt, hence the appeal may be dismissed.

10. Before examining the rival contentions, it is necessary to record what the Prosecutrix and her mother have deposed in their cross examination :-

Cross examination of PW-3 'G' – the Prosecutrix

'I do not know my date of birth. I have been knowing accused for last one year as he used to come to the shop of my mother. It is correct that I had friendship with the accused for 2/3 months. It is correct that I had asked the accused to marry me. Accused had given his consent for marriage. I did not tell my parents or any relative about the said proposal of marriage. It is correct that I had not narrated abovesaid facts to my parents because I was frightened that my mother would beat me. It is correct that because my parents were not agree for the marriage so I had gone with accused for marriage. Accused had not taken me forcibly, I had gone to him on my own. First of all we performed marriage in a temple and thereafter we performed marriage in the Court. It is correct that on asking by the Presiding Officer I submitted that there is not threat and I have performed the marriage with my consent. I had deposed in the Court on the last at the instruction of one advocate who had met us outside the Court. Police had enquired from me once only and no statement was recorded. Once my statement was recorded before a Judicial Officer. Before appearing in that Court I was briefed by the IO and I had deposed in

accordance with that briefing. It is correct that I had refused to undergo for medical examination as no force was used by the accused.'

Cross examination of PW-4 Saraswati Devi – mother of the Prosecutrix

'I have studied upto class 2nd or 3rd. I am 38 years of age. I got married in the year 1988. I have three children. I do not remember their date of birth. My all the three children had born on an interval of one year. My first child was born on the second year of my marriage. It is correct that photocopy of ration card Ex.PW4/DA belongs to my family. I do not know as to what time was consumed in getting the ration card issued. My husband had furnished the requisite information in the ration card. I was not aware whether my daughter used to meet accused. There are 2/3 shops around my tea stall. My cousin and my brother resides with me and they support me. It is correct that the offer of marriage accused with my daughter had come but I was not agreed for the same as the accused was not of my liking. I have come to this Court 2/3 times in connected with this case. I have not engaged any lawyer however I had met with one known lawyer who had seen my case file and had briefed me about my statement. I had deposed in the Court in accordance to that.'

11. The MLC Ex.PW7/A of the Prosecutrix 'G' prepared at DDU Hospital on 19.12.2011 at 12.50 am record the history given by the Prosecutrix herself as under:

'13 years female age told by mother and herself bring for medical examination.

H/o left home four months back and get married two months back.

No H/o sexual contact before or after marriage.

LMP – 12.12.11

.....

No external fresh injury...

Pt. and mother refused for medical examination'

12. The Prosecutrix 'G' was examined by the Gynecologist on 21.12.2011 at 4.30 pm and her another MLC Ex.PW11/A was prepared wherein it has been recorded as under:

*'Alleged history of sexual assault as told by the patient. **Patient ran away with unknown on 22/8 to Bihar. H/o sexual contact once as told by the patient. However no contact since last 1½ month.***

Patient was later on recovered by the police 17/12/11.

UPT +ve

d – 7+3

Pt. for MTP after proper investigation and consent'

As per the MLC, her Urine Pregnancy Test being positive, MTP has been done.

13. From the contents of FIR and the statement made by the Prosecutrix as well admission made by PW-4 Saraswati Devi – mother of the Prosecutrix during her cross examination to the effect that the Prosecutrix was having love affair with the appellant which fact was well within the knowledge of her mother but since she did not like the appellant she was not agreeable for getting Prosecutrix married to him. The manner in which the complete details of the appellant has been mentioned in the FIR which was registered after 19 days of her leaving home and recovery of the Prosecutrix from the house of the appellant, admission by the Prosecutrix that marriage was solemnized leads to the conclusion that it was a case of running away from house to marry a person of her choice.

14. In the case *Manish Singh versus State Govt. of NCT & Ors* 126 (2006) DLT 28 (DB), this Court had dealt with the cases of runaway marriages where in most of the cases the girl is minor aged about 16 years to

18 years. It was held as under :-

'Run Away Marriages' are manifestation of generational change due to variety of factors, including increased interaction between sexes with young boys and girls attaining majority rapidly. It is complex problem with inter play of social, economic, religious, caste, educational factors, including sex education and vulnerability and backwardness of weaker sex having its impact and that Child Marriage Restraint Act and Hindu Marriage Act are social legislations aimed at protection and development of vulnerable sex and to be interpreted and worked accordingly.'

15. Now the question arises about the age of the Prosecutrix. In the case **Ravi Vs. State** 2010 Cri.L.J. 3493 in para 11, it was held as under :

"11. Simply because an information furnished by someone else had been duly entered in the school records giving a date of birth at the time of admission of the student, it cannot be presumed that such date of birth is the correct date of birth, unless the informant comes to the Court and deposes that it was he who gave such information to the school authorities and unless he establishes that the said information furnished by him was relating to the correct date of birth."

16. Here in the instant case, the Prosecutrix had been got admitted in the school on the basis of affidavit filed by her father who has not been examined in this case. PW-4 Saraswati Devi – mother of the Prosecutrix has stated that she got married in 1988, first child was born in the second years of her marriage and that her other two children were born with gap of one year. So if the first child is presumed to be born in the year 1990, then the second child would be born in the year 1992 and the third child i.e. prosecutrix would be in the year 1994. The Prosecutrix has run away in the year 2011. Thus, at that time, she must be about 17 years of age. It may also be mentioned here that the appellant in this case was 23 years old and had

the Prosecutrix been 12-13 years old, the objection by her mother to the marriage could have been about the age itself between the two and not about disliking the boy as stated by PW-4 Saraswati Devi – mother of the Prosecutrix.

17. As per the MLC of the prosecutrix, there was no external/internal injury found and she herself given the history of getting married to the appellant. In view of the statement made by mother of the prosecutrix, the age of the prosecutrix can be about 16-17 years at the time she left home to marry the appellant.

18. It being a case of runaway marriage wherein prosecutrix had physical relations with the appellant as his wife, the appellant could not have been convicted for the offence punishable under Section 376/323 IPC.

19. Resultantly the appeal is allowed. The appellant is acquitted of the charges framed. He be released forthwith if not wanted in any other case.

20. TCR be sent back alongwith copy of this order.

21. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

PRATIBHA RANI, J.

MAY 30 2016

'st'