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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : DECEMBER 07, 2015

DECIDED ON : FEBRUARY 02, 2016

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CRL.A. 1044/2014, CRL.M.B. 7497/15 & 8027/15
CRL.M.A.No.14214/15 & 4533/15

AJAY KUMAR SONAR @ AJAY

..... Appellant

Through : Mr.Rajeev Chhetri & Mr.Rajesh
Chhetri, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Ahlawat, APP with SI
Vivek Maindola.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 19.04.2014 of learned Additional Sessions Judge in Session Case No.73/13 arising out of FIR No.156/12 registered at Police Station Sector -23, Dwarka by which the appellant Ajay Kumar Sonar @ Ajay was held guilty for committing

offences under Sections 323/328/376/506 IPC. By an order dated 24.04.2014, he was awarded various prison terms with fine.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 25.08.2012 at about 2.00 p.m. at House No.107, Servant Quarter Salaria Enclave, Sector-21, Dwarka, the appellant committed rape upon the prosecutrix 'X'(assumed name), aged around 15 years, after administering stupefying substance mixed in medicine. 'X' was slapped and criminally intimidated. The incident was reported to the police on 01.10.2012. The Investigating Officer after recording victim's statement (Ex.PW2/A) lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested and taken for medical examination. Exhibits collected during investigation were sent for examination to Forensic Science Laboratory. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the court. In order to establish its case, the prosecution examined fourteen witnesses. In 313 statement, the appellant pleaded false implication and denied his involvement in the crime. The trial resulted in his conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and committed grave error to base conviction on the uncorroborated testimonies of the prosecutrix and her sister. The prosecution was unable to explain the inordinate delay in lodging the FIR. No external injuries were found on the body of the prosecutrix during her medical examination. The prosecutrix, her mother and sister did not support the prosecution in entirety. Learned Additional Public Prosecutor urged that there are no sound reasons to disbelieve the prosecutrix who had no extraneous consideration to falsely implicate the appellant.

4. Admitted position is that the appellant was acquainted with the prosecutrix and her family members before the incident. In 313 statement, the appellant admitted that 'X's mother and brother used to visit his place of residence to meet his employer Wing Commander Hiremat. He further admitted that 'X' was suffering from eczema and was unable to walk properly.

5. From the very inception, it was the prosecution's case that the victim was aged around 15 years on the day of occurrence. In her complaint (Ex.PW-2/A), 'X' disclosed her age as 15 years. Similar is the

age disclosed by her in 164 Cr.P.C.statement (Ex.PW-2/B) and MLC (Ex.PW-6/A). PW-1 (Smt.Kalawati), Principal, MCD Primary School, Sector-8, Dwarka, New Delhi, proved record (Ex.PW-1/A to Ex.PW-1/E) to show that 'X' was admitted in her school in class 1st (Primary) on 05.07.2006 vide admission No.2231. Parents had disclosed her date of birth as 30.01.2001 which was entered in the record. 'X' studied in the school till 26.03.2011 and School Leaving Certificate (Ex.PW-1/D) was given to her. She admitted that the date of birth declared by 'X's parents was not verified and it was not based on any birth certificate. In her deposition as PW-2, 'X' claimed herself to be 15 years old, a student of class 6th. Nothing was suggested to her that she was above 16 years of age on the day of occurrence. PW-3 (Meenakshi), 'X's sister, was also not questioned as to what was the age of prosecutrix on the day of incident. PW-5 (Guddi Devi), X's mother, in the cross-examination revealed that 'X' was around 12/13. From all this, its stands established that 'X' was below 16 years of age on the date of incident and her consent (if any) to have physical relations with the appellant was of no consequence. The date of birth (30.01.2001) came to be recorded way back in 2001. Parents of the victim had not anticipated any such incident to occur later on to manipulate her date of birth in the school record. The appellant himself

did not produce any document to show that 'X' was above 16 years of age on the day of incident. He did not ask for ossification test during trial.

6. In her complaint (Ex.PW-2/A), the prosecutrix gave detailed account as to how and under what circumstances physical relations were established by the appellant against her wishes after administering stupefying substance in tea at his residence. The appellant was named in the FIR and specific role was assigned to him. In 164 Cr.P.C. statement (Ex.PW-2/B), the prosecutrix reiterated her version and implicated the appellant for having physical relations with her. In her examination-in-chief recorded on 04.04.2013, she proved the version given to the police/court in entirety and specifically deposed that on 25.08.2012 at about 2/3 p.m., the appellant had taken her from her house on the pretext to examine her by a doctor. He took her to the same hospital where she was examined earlier. Thereafter, the appellant took her to his room No.107, Servant Quarters, Salaria Enclave, Dwarka, New Delhi and asked her to have a cup of tea. After consuming tea, she became unconscious. The appellant established physical relations with her. When she enquired from the accused as to what he had done after regaining consciousness, he slapped her twice or thrice and threatened to kill if she disclosed the incident to anyone. She became terrified; put 'on' clothes and the accused

brought her to her house. Due to fear, she did not inform her mother and brothers about the incident. On 29.09.2012, when she had a conversation with her elder sister Meenakshi on phone, she asked her to reach Delhi immediately. On her arrival to Delhi, she apprised her about the incident.

7. PW-3 (Meenakshi), 'X's elder sister, corroborated her version. In her examination-in-chief recorded on 04.04.2013 she deposed that on 'X's request to come immediately to Delhi, she arrived there on 29.09.2012. 'X' apprised her about the incident and implicated the accused who lived in the neighbourhood to have committed rape upon her.

8. It is pertinent to note that the victim and her sister recorded their examination-in-chief- on 04.04.2013. However, their cross-examination was deferred at the request of learned proxy counsel who informed that the main counsel was not available. These two witnesses could be cross-examined thereafter only on 25.10.2013 and 29.11.2013 respectively. It appears that during this period, both these witnesses were won over and for that reasons they took somersault in the cross-examination and declined if any such incident of rape had taken place. They were re-examined by the learned APP and were confronted with their earlier statements given before the police/Court.

9. The Trial Court rightly relied upon the law laid down in *Khujji alias Surendra Tiwari vs. State of Madhya Pradesh* AIR 1991 SC 1853 to discard the version given by PWs-2 and 3 in their cross-examination. The defence had deliberately sought adjournments on various dates to gain time to win over the prosecutrix and her sister and for that purpose, they had not cross-examined them. The result was obvious and in their cross-examination they gave a completely different version. Nothing is on record to show that the victim or her mother/sister had any motive or previous animosity with the appellant to involve him in such a heinous case at the first instant.

10. It appears that the prosecutrix in her exaggerated version has implicated the accused for establishing physical relations against her wishes. Circumstances emerg on record demonstrate that the prosecutrix seemingly was a consenting party. She had gone to the appellant's residence without any demur and had stayed there for considerable period. Physical relations took place between the two there and at no stage 'X' raised hue and cry. After the rape incident, she did not protest and without raising any alarm, returned to her house. She did not narrate the incident to her family members. No visible injuries were noticed on her body. She maintained silence for about two months and at no stage complained

about appellant's conduct and behaviour. In her 164 Cr.P.C. statement (Ex.PW-2/B) the prosecutrix disclosed that she was ready and willing to marry the appellant on attaining age of majority. She further disclosed that after the physical relations, when she had enquired from the appellant as to why he had done so, he disclosed that he loved her and wanted to marry. It appears that both the prosecutrix and the appellant had intimate relationship but because victim's mother objection to it, it could not go further. Photocopies of certain documents have been placed on record whereby love letters were exchanged. However, these could not be proved on record. The prosecutrix was not medically examined soon after the incident. Her medical examination after about two months vide MLC (Ex.PW-6/A) was of no relevance to ascertain if she suffered any injuries on her body including private parts at the time of commission of the crime. The fact that the prosecutrix and her close family members opted to exonerate the appellant in their cross-examination recorded after a gap of certain months lends credence to the fact that they did not want stern action against the appellant.

As discussed above, physical relations (if any) between the two even with consent have no relevance as the prosecutrix was below 16

years of age. Conviction of the appellant on that score under Section 376 IPC cannot be faulted and it is affirmed.

11. Regarding sentence, the appellant was awarded Rigorous Imprisonment for seven years with fine ₹10,000/- under Section 376 IPC. Nominal roll dated 08.07.2015 reveals that he has already undergone two years, four months and fifteen days incarceration besides remission for three months and eighteen days as on 07.07.2015. He is not a previous convict and is not involved in any other criminal activity. His overall conduct in jail is satisfactory. Sentence order further records that the appellant has a widowed mother and two unmarried brothers to take care of them at Jharkhand as they are financially dependent upon him. Appellant's mother is suffering from cataract and was unable to undergo surgery.

12. Considering these mitigating circumstances and the fact that the prosecutrix was a consenting party and she and her mother opted to exonerate him in their cross-examination, the Sentence Order is modified to the extent that the substantive sentence of the appellant shall be Rigorous Imprisonment for five years instead of seven years under Section 376 IPC. Other terms and conditions of the Sentence Order are left undisturbed.

13. The appeal stands disposed of in the above terms. Trial Court record along with the copy of the order be sent back forthwith. Intimation be also sent to Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 02, 2016

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