

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

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Reserved on: January 11, 2017

Decided on: 4th May, 2017

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CRL.A. 954/2001

MANAS RANJAN JAINA

..... Appellant

Represented by: Mr. Sibor Shankar Mishra and
Mr. Niranjan Sahu, Advocates.

versus

STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal Manas Ranjan Jaina challenges the impugned judgment dated 7th July 2001 whereby he is convicted for the offences punishable under Sections 366/376 IPC and the order of sentence dated 9th July 2001 whereby he is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 5,000/- for the offence punishable under Section 376 IPC and rigorous imprisonment for a period of 3 years and a fine of Rs. 5,000/- for the offence punishable under Section 366 IPC.
2. Assailing the conviction, learned counsel for the appellant submits that there are contradictions in the statement of the prosecutrix recorded by the police and her deposition in the Court. The prosecutrix had a relationship with the appellant, thus, the act was consensual. In the alternative, it is prayed that the appellant be released on the period already undergone.
3. Per contra, learned APP for the State submits that the impugned judgment suffers from no illegality and considering the seriousness of the offence and the minimum sentence prescribed, the appellant be not released on the period undergone.

4. Process of law was set into motion on 28th July 1999 on receipt of DD No. 9A at PS Gokulpuri wherein PW-4 stated that his daughter was missing. Later the prosecutrix was traced from a factory in Panipat from where her father brought her back. On 30th July 1999 the prosecutrix was brought to the police station where her statement was recorded on the basis of which FIR No. 357/1999 was registered under Sections 363/366/376 IPC at PS Gokulpuri. Thereafter, the statement of the prosecutrix under Section 164 Cr. P.C. was recorded and she was medically examined.

5. PW-2 the prosecutrix deposed that she was residing along with her family members in Chauhan Pur. She had studied in Dayal Pur Government school upto 7th standard. Her friend Bobby who was her neighbour, got her acquainted with Littu alias Manas Ranjan Jaina who was her uncle. On 26th July 1999, the appellant kidnapped her on the false pretext that he will take her to Panipat. Bobby had also told her that she too will be going to Panipat, however, eventually she didn't go. The appellant took her first in a three wheeler scooter upto ISBT and from there they took a bus to Panipat. They started from Delhi around 12:00 noon and reached Panipat around 4:00 P.M. The appellant took her to a factory where the labourers used to sit. The appellant committed sexual intercourse for three consecutive nights forcibly without her consent. Her father and her brother arrived after three days at Panipat and came to the factory where the appellant was employed and had taken her. During her cross examination, she stated that the appellant was residing just in front of their house. The appellant had earlier been to Panipat in search of a job. She also stated that when she used to raise alarm, the appellant used to threaten her and sometimes he even closed her mouth with his palm.

6. PW-4, father of the prosecutrix, stated that the prosecutrix, aged about 15 years, had left her studies after completion of class VII. On 26th July 1999, at

about 11:00-12:00 noon he found the prosecutrix missing from the house and searched for her till evening. On 27th July 1999, he visited the police station for lodging a missing report, however the police did not lodge his report. However, a missing report was lodged on 28th July 1999. When he suspected that the appellant had kidnapped the prosecutrix, he took Bobby to the place where the appellant was working at Karawal Nagar in a utensils factory. The owner of the factory gave an address of a factory in Panipat where the appellant was currently employed. He along with his relatives namely Gublu, Gulwant, Babu etc. reached the factory around 12:00 noon on 29th July 1999 from where the prosecutrix was recovered.

7. PW-5, mother of the prosecutrix, corroborated the testimony of PW-4.

8. PW-6 stated that PW 4 is the brother-in-law of his brother. He had accompanied PW-4 to Panipat on 29th July 1999 and from there they brought the prosecutrix to Delhi.

9. PW-13 Bal Kishan, who was running a factory in Panipat stated that one of the labourers, who had started working 3-4 days prior to the incident, had brought a girl to the factory. He didn't remember the name of that labourer. He further stated that the father of the said girl came to his factory and enquired about the whereabouts of his daughter. The boy who had brought the girl had escaped from the spot, however, the girl was recovered from the labour quarter of his factory and she accompanied her father. He also stated that the father of the girl had said that the boy who had brought the girl was their relative.

10. PW-3 Dr. Rakhi Gupta who had medically examined the prosecutrix exhibited her detailed report as Ex. PW-3/A. She stated that on PV examination, two fingers easily could be admitted from which it can be inferred that she had experienced sexual intercourse. No external injury marks and no injury in genital region were found.

11. PW-10 Dhruv Sharma, Senior Scientific Officer, Biology cum Ex-Officio Chemical Examiner to Government of NCT exhibited the FSL Report Ex. PW-10/A which noted that human semen was detected on Exhibit 1 which is Gauze cloth piece having pale yellowish stains. The serological report was exhibited as Ex. PW-10/B.

12. PW-12 Dr. Vineeta Rathi, Assistant Professor Radiology department, GTB Hospital stated that she had examined the x-ray report of the prosecutrix for bone age determination and she opined vide the report Ex. PW-12/A that the bone age of the prosecutrix appeared to be 12-14 years. This witness was not cross-examined despite opportunity hence her testimony has gone unchallenged.

13. The defence of the appellant is of false implication due to the fact that Bobby the co-accused who was acquitted had got lodged an FIR against the parents of the prosecutrix for allegedly parading her naked in the locality. As regards the appellant, the suggestion given to the prosecutrix was that a quarrel took place between the maternal uncle of the prosecutrix and the appellant for vacating the house and thus, he was falsely implicated. However, no such plea was taken by the appellant in his statement recorded under Section 313 Cr.P.C. By the impugned judgment, learned Trial Court acquitted Bobby, the friend of the prosecutrix and relative of the appellant coming to the conclusion that there was contradiction in the testimony of the prosecutrix on that count and even if it is accepted that Bobby was instrumental in acquainting the appellant with the prosecutrix, the said act was not an offence.

14. In the present case, the evidence of the prosecutrix is fully corroborated by her parents and the medical examination. Further corroboration is rendered to the prosecution case by the evidence of PW-13 Bal Kishan an independent witness in whose factory the appellant had started working 3-4 days prior to the

incident and from where the girl was recovered. Though Bal Kishan did not identify the appellant or the prosecutrix however the fact remains that in his examination-in-chief he deposed about the entire sequence of events and recovery of the girl from the labour quarters.

15. In view of the evidence on record and the fact that it has been proved beyond reasonable doubt that age of the prosecutrix was between 12 years and 14 years and her consent was thus immaterial, the charge for offence punishable under Sections 366/376 IPC stands proved beyond reasonable doubt against the appellant. Upholding the judgment of conviction and order on sentence, the appeal is dismissed. Bail bond and surety bond of the appellant are cancelled. He appellant would surrender to the custody to undergo the remaining sentence.

16. Appeal is dismissed.

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

18. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 04, 2017
‘v mittal’