

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

Date of Order: June 12, 2017

+ **CRL.A. 737/2014**

PAWAN KUMAR @ DEEPU Appellant
Through: Mr. Aditya Vikram, Delhi High
Court Legal Services Committee's
Panel Advocate

versus

STATE Respondent
Through: Mr. Mukesh Kumar, Additional
Public Prosecutor for State with SI
Pardeep

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
(ORAL)

In this appeal, appellant has been held guilty for the offences under Sections 363/366/328/376/506 of IPC vide impugned judgment of 27th March, 2014 and vide order of 29th March, 2014, he has been sentenced to rigorous imprisonment for 10 years with fine of ₹10,000/- for the offence under Section 376 of IPC and for the offences under Sections 328/363/366 of IPC, he has been sentenced to rigorous imprisonment for 5 years with fine of ₹4,000/- for each of these offences, with default clause. However, for the offence under Section 506 of IPC, he has been

sentenced to rigorous imprisonment for 3 years with fine of ₹3,000/- with default clause. Trial court has directed that the above sentences shall run concurrently.

The facts emerging from impugned judgment are already noted in detail in the opening paragraphs of impugned judgment and need no reproduction. Suffice to note that as per prosecutrix (*PW-1*), her age was 15½ years on the day of incident i.e. on 16th April, 2011. Apart from evidence of prosecutrix (*PW-1*), there is evidence of parents (*PW-3* & *PW-4*) of prosecutrix, medical evidence and the other evidence, on which trial court has relied while discarding appellant's plea of false implication and has convicted and sentenced appellant as noticed hereinabove.

At the outset, learned counsel for appellant submits that appellant on the day of incident i.e. 16th April, 2011, was in his early twenties and was unmarried. It is also submitted that appellant is a poor person, and a sole bread-earner of his family and that he is not involved in any other case and his conduct in jail has been satisfactory and so, the sentence awarded to appellant deserves to be reduced to the period already undergone by him.

On the other hand, learned Additional Public Prosecutor for State supports the impugned judgment and order on sentence and submits that though the minimum sentenced provided for the offence under Section 376 of IPC on the day of incident was seven years, but the sentence awarded to appellant is just and proper in the facts of the instant case. Learned Additional Public Prosecutor for State has placed on record appellant's latest Nominal Roll of 9th June, 2017 and submits that as per

appellant's latest Nominal Roll, appellant has already undergone sentence of six years and ten months and appellant's sentence has been recently suspended.

A Coordinate Bench of this Court in a case of rape of minor girl in CrI.A. No.322/2016 *Vikas vs. State*, decided on 5th June, 2017 and CrI.A.No. 438/2011 *Sandeep vs. State* vide order of 8th August, 2012 has reduced minimum sentence of seven years to five years while taking note of antecedents of accused, his past conduct and the manner in which the incident took place.

Upon hearing and on perusal of impugned judgment, order on sentence, appellant's Nominal Roll of 9th June, 2017 and the evidence on record, I find that conviction of appellant cannot be faulted with. However, there is scope for reduction of the sentence awarded to appellant, as he is not involved in any other case and his conduct in jail has been satisfactory. In any case, there is no impediment in reducing the sentence awarded to appellant from ten years to minimum sentence of seven years, but it is to be seen as to what are the adequate and special reasons to further reduce the minimum sentence of 7 years by a couple of months.

No doubt, the offence of rape is heinous crime, but when this offence was committed, the Proviso to Sub-section (1) of Section 376 of IPC permitted imposition of sentence less than the minimum sentence of seven years for adequate and special reasons. To levy an appropriate sentence, ample discretion was conferred on the courts when the offence in question was committed. The discretion to award sentence for a period

less than the minimum sentence provided is not unfettered. Various factors, like the nature, gravity, manner and the circumstances under which the offence was committed, as well as the antecedents of accused have to be cumulatively considered. Upon doing so, in the instant case, I find that it is not a case of seducing or enticing away of the prosecutrix.

As per prosecutrix's version, appellant-accused had offered to marry prosecutrix (*PW-1*) and it is not the case of prosecutrix (*PW-1*) that she had declined to marry appellant by asserting that she is of minor age. The sequence of events as unfolded by prosecution reveals that there was an agreement to marry (*Ikrarnama*), which prosecutrix (*PW-1*) had signed in front of two witnesses. It has also come in the evidence that after this incident, prosecutrix (*PW-1*) had talked on phone with her father and she was kept at the house of appellant's aunt (*Bua*). Evidently, prosecutrix (*PW-1*) was being treated as a family member. This stands substantiated from the fact that prosecutrix had also talked to appellant's father on phone.

Upon taking into consideration that appellant was in his early twenties then and he was working where prosecutrix's father was working and that appellant was on visiting terms with the family of prosecutrix and that the prosecutrix was treated well by appellant-accused and his relatives, while she had remained with appellant, I find that the above-noted circumstances provide special reasons for marginally reducing the sentence awarded to appellant to less than the minimum sentence prescribed.

In the peculiar facts and circumstances of this case, the substantive sentence awarded to appellant is reduced to 6½ years i.e. marginally less than the minimum sentence of 7 years. In addition, the sentence of four months already undergone by appellant over and above the sentence of 6½ years, is treated as sentence in default of payment of fine for the offences in question. It is noted in the Nominal Roll of appellant that in pursuance to order of 3rd May, 2017, appellant has been released on bail on 16th May, 2017. Since the entire sentence awarded to appellant is reduced to the period already undergone by him, so the bail-bonds furnished by him are discharged.

In view of the aforesaid, the sentence awarded to appellant is modified to the extent as indicated above.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JUNE 12, 2017

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