

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

CRL. A. 75/2013

Reserved on : 17.02.2020
Decision on : 04.03.2020

IN THE MATTER OF:

RUDAL MANDAL

..... Appellant

Through: Mr. Shaad Anwar and Ms. Shabnam,
Advocates

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings impugn judgment of conviction dated 30.11.2012 and order on sentence dated 15.12.2012 passed by Addl. Sessions Judge in FIR No. 701/2007 registered under Sections 363/342/376/313/201/506/34 IPC at P.S. Punjabi Bagh.

2. The appellant was convicted under Sections 313/342/201 IPC read with Section 109 IPC and sentenced to undergo RI for five years u/s 313 IPC read with Section 109 IPC along with fine of Rs. 3,000/-, in default whereof he was directed to undergo SI for three months, RI for two years u/s 201 IPC read with Section 109 IPC along with fine of Rs. 1,000/- in default whereof, he was directed to undergo SI for one month and RI for one year u/s 342 IPC read with Section 109 IPC. Benefit of Section 428 Cr.P.C. was

granted and all the sentences were directed to run concurrently.

3. The co-accused Kamlesh Kumar Gop @ Deepak preferred an appeal bearing Criminal Appeal No. 826/2013 against the impugned judgment passed by the trial court and the same was dismissed vide judgment dated 31.01.2014 wherein his conviction was upheld.

4. Briefly, the facts as noted by the trial court, are as follows:-

"1. The case of the prosecution, in brief, is that on 23-10-2007, Prosecutrix "V" went to PS Punjabi Bagh and gave her complaint regarding rape, in her complaint, Prosecutrix disclosed that she is aged about 14 years old and resident of village Butung, Post Bachrao, PS Narayanpur. Distt. Jabhpur, Chattisgarh. On 01-07-2007, she came to Delhi on being misguided by accused Sangeeta and Kaleshwar @ Deepak both agents of Ritu Placement Service, A-199, Lai Quarters, Delhi-63 and the Agency was run by Rudal and Anima. Sangeeta told her that it feels very good in Delhi and they both will live in Delhi. The complainant was reluctant to come to Delhi but Sangeeta and Kaleshwar told her that they will leave her at Punjabi Bagh Convent. She spent the night in placement Agency. In the morning, when complainant asked to go to Convent, the door was closed and her belongings were hide. Thereafter, Prosecutrix spent the night in Placement Agency. On 06-07-2007 at about 10:30 pm, accused Kaleshwar was drunk and he forcibly took prosecutrix to a small room and raped her there. The clothes of Prosecutrix were burnt. Whenever, Prosecutrix asked to go to her house, she was beaten by Kaleshwar and threatened to burn the family of Prosecutrix, Instead of sending Prosecutrix to her house, she was sent to work forcibly. When Prosecutrix came to know that she was carrying three months pregnancy and disclosed this fact to the owner of placement agency namely Rudal, he brought medicine and gave it to Prosecutrix, On 23-09-2007, prosecutrix

took the medicine. After four days, Prosecutrix was sent to do work in Kirti Nagar. Accused Kaleshwar threatened Prosecutrix that if she disclosed these things to anyone, her family would be killed.' On this complaint, FIR was registered u/s 363/342/376/313/201/506/34 IPC and investigation was entrusted to ASI Urmil Sharma. During investigation, Prosecutrix was got medically examined from Sanjay Gandhi Hospital, Mangolpuri. Accused Kamlesh Kumar Gop @ Deepak, Sangeeta Minz and, Rudal, Mandal were arrested. Statement of Prosecutrix was got recorded on 27-10-2007 and after completion of investigation, chargesheet was filed in the court u/s 363/342/376/313/201/506/34 IPC."

5. The Trial Court, vide order dated 20.03.2008, framed the following charge against the appellant:-

"That you on or before the date of kidnapping of prosecutrix you being Convener of Ritu Placement Services, had conspired with your co-accused to abet an illegal act i.e. to facilitate the offence of miscarriage of the pregnancy of prosecutrix and offence of rape committed by your co-accused Kaleshwar @ Kamlesh @ Deepak. In pursuance of this abetment your co accused Kaleshwar committed rape upon the prosecutrix in a room of placement agency and you were present near the room. You also gave some medicines to prosecutrix due to which a miscarriage of her pregnancy had taken place and you thereby committed an offence punishable under section 376/342/313/201 IPC r/w section 109 IPC and within my cognizance."

6. In support of its case, the prosecution examined total of 11 witnesses.

MATERIAL WITNESSES

7. The prosecutrix was examined as PW1. She deposed that she was 14 years of age and that co-accused Kamlesh Kumar was already known to her as his house was situated at a distance of about 3-4 kms from her village. The co-accused Sangeeta Minz (declared PO) was her cousin sister. She was brought to Delhi from Chhattisgarh by the aforesaid two persons without the consent of her parents on the pretext of providing her a job. In Delhi, she was taken to the office of Ritu Placement, Punjabi Bagh run by the appellant where she was kept for a week. During this period, on 06.07.2007 at about 10:30 pm, co-accused Kamlesh Kumar committed rape upon her by putting his urinating portion in her urinating portion inside the room of the placement agency. After committing rape, Kamlesh Kumar burnt the clothes worn by her. Thereafter, she was forcibly sent to work at a house in Kirti Nagar by the appellant and Kamlesh Kumar. After 3 months of the incident of rape, she came to know about her pregnancy on account of rape committed by Kamlesh and told the appellant about the same. The appellant brought some medicines from the market and gave the same to her by assuring her that she would get well. The prosecutrix deposed that she was not aware that the medicines given by the appellant were meant for abortion. After consuming the same, she felt severe pain in her stomach and started bleeding mixed with pieces of flesh. She further deposed that co-accused Kamlesh had threatened to kill her and her family due to which she did not disclose the incident of rape and abortion to anyone. When her cousin brother and sister came to the placement agency, they rescued her and took her to P.S. Punjabi Bagh where she had given a handwritten

complaint (Ex. PW1/A). She also deposed that she had studied upto 6th class at AA.JA.KA. *Poorv Madhyamik Shala* in Chhattisgarh and exhibited the copy of school transfer certificate as Ex. PW1/C and a certificate issued by the Sarpanch of Gram Panchayat as Ex. PW1/D. The date of birth of the prosecutrix recorded in the aforesaid certificate is 29.06.1994. The prosecutrix also identified the appellant in Court.

8. Mr. 'VP', father of the prosecutrix was examined as PW2. He stated that the prosecutrix was his second child and her date of birth is 29.06.1994 and she went missing from the house on 01.07.2007. On 16.10.2007, he received a call from his nephew who told him that the prosecutrix was in Chetanalya Sanstha, Delhi. He came to Delhi and the prosecutrix told him about the incident of rape as well as the role of the accused persons including the appellant.

9. Ms. Phenomena Tirkey was examined as PW3. She deposed that on 01.10.2007, the prosecutrix was rescued from the office of Ritu Placement and taken to West Punjabi Bagh Convent. The prosecutrix told her about the incident and the role of the accused persons including the present appellant.

MLC

10. The prosecution examined Dr. Binay Kumar, CMO, SGM Hospital, Delhi as PW4. He deposed that on 24.10.2004, the prosecutrix was admitted in the hospital with the history of kidnapping and alleged sexual assault three months back. After examination, he referred the prosecutrix for gynae opinion and the medical board for bone age determination. He exhibited the endorsement in this regard at point A on the MLC of the prosecutrix (Ex. PW4/A).

11. Dr. Kapila Sodhi, Sr. Resident, Gynae, SGM Hospital, Delhi was

examined as PW5. She deposed that on 24.10.2007, she examined the prosecutrix who gave history of sexual assault three months back. The patient's LMP was on 01.10.2007. The prosecutrix gave history of one abortion after three months of Amenorrhea (13 weeks of pregnancy). The prosecutrix also gave history of taking pills on 27.09.2007. On examination, her hymen was found torn. On PV examination, introitus lax admitted two fingers easily. She further deposed that she had opined that it could not be said conclusively that the patient had undergone abortion and it could be assumed by a local examination that penetration had taken place.

12. The prosecution also examined police witnesses associated with the investigation as well as the Metropolitan Magistrate who recorded the statement of the appellant under Section 164 Cr.P.C.

13. Learned counsel for the appellant has contended that as per the bone age report, the age of the prosecutrix has been opined to be 16-18 years. He further contended that except the oral testimony of the appellant, no evidence has come on record to establish the factum of abortion. He has also referred to the opinion in the MLC of the prosecutrix where it was stated that it could not be said conclusively that the prosecutrix had undergone abortion. Lastly, it was contended that the testimony of the prosecutrix is not creditworthy as the complaint was filed after a period of one month.

14. Per contra, learned APP has supported the impugned judgement. It was submitted that the testimony of the prosecutrix has been consistent and reliable.

15. I have heard learned counsels for the parties and gone through the case records.

16. The prosecutrix has stated her date of birth as 29.06.1994. She has

proved on record the certificates with respect to her age which show that she was 14 years of age at the time of the incident. Although, as per the bone age report, it was opined that the age of the prosecutrix could be in the range of 16-18 years but in view of the school certificate, which was proved on record, the same shall have precedence over the bone age report. As such, I concur with the finding of the trial court that the prosecutrix at the time of the incident was 14 years of age.

17. The prosecutrix had sent a handwritten complaint dated 23.10.2007 exhibited as Ex.PW1/A where she had levelled allegations of confinement and being given medicine by the appellant. At the time of recording of her MLC on 24.10.2007 she gave history of medical abortion and pills taken on 27.09.2007.

18. Although, learned counsel for the appellant also contended that the appellant was not running the placement agency, however, a perusal of the appellant's statement recorded under Section 313 Cr.P.C. shows that while answering Question No. 2, he admitted that the prosecutrix was brought to his placement agency and immediately after her enrolment, she was sent to another placement agency. A perusal of the cross-examination of the prosecutrix would show that a suggestion was given to her that she had falsely implicated the appellant as he had not given her the dues. In fact, she denied the suggestions that a settlement was arrived at wherein it was agreed that the appellant would pay her the dues within 10-15 days.

19. It is trite law that the sole testimony of a prosecutrix can be the basis for conviction provided the same is trustworthy and credible. [Refer: State of Punjab v. Gurmit Singh and Ors reported as **1996 (2) SCC 384**; State of Himachal Pradesh v. Manga Singh reported as **2018 SCC OnLine SC 2886**]

20. It has come in the testimony of the prosecutrix that she was brought to the office of Ritu Placement run by the present appellant where she was locked inside the room by the co-accused Kamlesh. It has further come in the testimony that during this period of confinement, the co-accused committed rape upon her and when she came to know about her pregnancy, she confided the same to the appellant. She also told the appellant that she was not feeling well. The appellant gave some medicines to her without telling the consequence of the same. It has come in her testimony that the medicine was given by the appellant without telling her that the same was meant for abortion. After taking the medicine, she suffered severe stomach pain and blood loss, which resulted in abortion. The prosecutrix has been consistent in all her statements whether recorded during the investigation or the trial. This court is of the view that the testimony of the prosecutrix is both trustworthy and credible.

21. For the reasons discussed above, the appeal has no merit. The same is dismissed accordingly. The appellant's bail bonds are cancelled and sureties are discharged. He shall surrender before the concerned trial court within four weeks from the passing of the present judgement to serve the remaining sentence.

22. Copy of this judgement be sent to the trial court for compliance.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 04, 2020
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