



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

% Reserved on: November 25, 2021
Decided on: July 04, 2022

+ **CRL.A. 391/2020**

NEERAJ BHATT Appellant
Represented by: Ms. Dolly Nair, Adv.

Versus

THE STATE (NCT OF DELHI) Respondent
Represented by: Mr. Ravi Nayak, APP for State with
SI Romal Rathi (IO), SI Avdesh, PS
Ambedkar Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the judgment dated 5th December 2019 convicting the appellant for offences punishable under Sections 363 IPC, 376(2) IPC and 6 of the POCSO Act as also the order on sentence dated 19th December 2019 whereby the appellant was directed to undergo rigorous imprisonment for a period of 10 years for offence punishable under Section 376(2) IPC as also rigorous imprisonment for a period of 7 years for offence punishable under Section 363 IPC and to pay a fine of ₹5000/- on both the counts, in default thereof to undergo rigorous imprisonment for a period of 30 days.

2. Learned counsel for the appellant contends that the prosecution has not proved the age of the prosecutrix as no school record or original birth certificate was placed on record. There is a discrepancy in the digital copy placed on record as the same does not match with number in the charge sheet. The prosecutrix made a request to the appellant on the Facebook and



became friendly. Since the appellant failed to fulfil the demand for a sum of ₹6,000/- made by the mother of the prosecutrix, the FIR in question was lodged. The appellant got married to the prosecutrix with the consent of her mother because he genuinely believed that she was above 18 years of age as was declared by her. The call detail records showing that the prosecutrix was in touch with her mother through phone calls had not been placed on record which could show that the mother of the prosecutrix had consented to the marriage of the prosecutrix with the appellant. The mother of the prosecutrix in the FIR stated that the prosecutrix is 14 years old, however, in the cross examination, the prosecutrix stated that her age was 18 years. Even in the Facebook account, the age of the victim was mentioned as 18 years which fact has not been investigated by the police and the Facebook account now stands deleted. Allegations of the prosecutrix that forcible rape was committed is not fortified by her MLC. There being no intention to commit offence as the prosecutrix represented herself to be a major, the appellant be acquitted of the charges framed against him.

3. Learned APP for the State submits that even as per the case of the appellant, he only put vermilion on the head of the prosecutrix and there was no legal marriage. There is no discrepancy in the digital copy of the certificate showing the date of birth of the prosecutrix and the allegations against the appellant have been duly proved by evidence of the prosecutrix and her mother.

4. Above-noted FIR was registered for offence punishable under Section 363 IPC on the complaint of mother of the prosecutrix who stated that her daughter aged 14 years studying in 9th Standard had gone to fetch milk in the morning and had not come back. She gave description of her daughter and the phone number of her daughter. She further stated that on 28th January



2014, her daughter received a phone in the evening and she suspected that the boy who made the phone call on 28th January 2014 from the phone number 7696348143 had kidnapped her daughter. On investigation carried out, prosecutrix was recovered from custody of the appellant on 10th May 2014 at Sukhna Lake, Chandigarh. Appellant was arrested and prosecutrix was medically examined, who was found to be pregnant, however, she did not allow to conduct her internal examination on 10th May 2014. The prosecutrix was medically examined on 11th May 2014 and her samples were collected and sent to FSL for comparison. Call detail records of the two mobile phone numbers were collected. It was found that there was frequent exchange of calls between the two numbers from 27th January 2014 to 29th January 2014. The mobile number used by the appellant was registered in his name and the mobile number used by the prosecutrix was registered in her mother's name.

5. Statement of the prosecutrix was recorded under Section 164 CrPC vide Ex.PW-1/A, wherein, she stated she met the appellant aged 20 years through her Facebook account. The appellant sent her a friend request and she added him in her friends list. They became good friends. The appellant told her that she should come to his house and they will marry. He stated that his family was staying with him and they would live together. On 29th January 2014, the appellant brought her to Chandigarh where she stayed at his house where his parents, younger brother and sister were also present. He put vermilion on her head and a Mangalsutra and on that night, he forcibly raped her and thereafter established physical relationship forcibly. When she opposed, appellant stated that they were married and once his grand-mother comes, they would perform marriage in the temple. The prosecutrix started residing with him and used to roam with him. On



Sunday, she came back when her mother came to pick her. Prosecutrix who appeared as PW-1 in the Court, reiterated the statement made by her under Section 164 CrPC.

6. Evidence on record reveals that the prosecutrix and the appellant became friends on the Facebook and thereafter, on the asking of the appellant, she went with him to Chandigarh and stayed there. Though the claim of the prosecutrix is that she was forcibly raped and the appellant stated that since they were married despite the fact that there was no legal marriage he performed sexual relationship with her, however there is no material to show that the prosecutrix ever protested or that she tried to escape from the clutches of the appellant.

7. However, the moot issue in the present appeal is whether the prosecutrix was a minor at the time of alleged incident. To prove the age of the prosecutrix, the prosecution examined PW-15 from the office of the Sub-Registrar, Birth and Death, who brought the record from the office, as per which, a female child was born to the parents of the prosecutrix on 12th June 1999. Date of registration was 22nd June 1999 and the registration number was also given. Copy of the birth certificate was exhibited as Ex.PW-15/A and copy of the record register was exhibited as Ex.PW-15/B. Computerized copy of the birth certificate was exhibited as Ex.PW-15/C. Objection taken by the learned counsel for the appellant was that the computerized copy of the certificate does not have serial number as mentioned in Ex.PW-15/A. Ex.PW-15/A is a page from the running register which bears the serial number as also the registration number, whereas, the computerized copy of the birth certificate issued in form No. 5 only mentioned the registration number and not the serial number of the running folder of the birth and death record. The same cannot be said to be a



discrepancy leading to the conclusion that the age of the prosecutrix has not been proved.

8. Undoubtedly, investigating agency was required to collect the date of birth from the school first attended in terms of Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007. As the prosecutrix had not completed her matriculation, however, in the absence of the date of birth from the school first attended, the date of birth as recorded before the Sub-Registrar is a valid proof. Since the prosecutrix was born on 12th June 1999 and the alleged offence took place on 29th January 2014 when the prosecutrix was nearly 14½ years, her consent, even if there, based on the chats between the parties, is immaterial.

9. The fact that sexual intercourse was committed on the prosecutrix is fortified, not only by her statement but also in view of the fact that when she was recovered, she was found to be pregnant. As per the MLC exhibited as Ex.PW-6/A, the prosecutrix stated that she ran away from the home on 29th January 2014 to Chandigarh, wherein, she was staying with the appellant and according to her, she used to have consensual sexual relationship with him. Notes with the MLC from AIIMS Ex.PW-6/A also noted that Urine Pregnancy Test showed positive. The uterus was found to be bulky thus both indicating the pregnancy and victim was advised various tests including ultrasound.

10. In view of the fact that the prosecutrix was a minor at the time of alleged offence, her consent, if any, was immaterial and hence, this Court finds no error in the impugned judgment of conviction and order on sentence.



11. Appeal is accordingly dismissed.
12. Order be uploaded on the website of this Court and intimation be sent to the appellant through the concerned Superintendent Jail.

(MUKTA GUPTA)
JUDGE

JULY 04, 2022
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