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

% **Date of decision: 09th August, 2023**

+ **CRL.L.P. 544/2019**

STATE

..... Appellant

Through: Mr. Tarang Srivastava, APP for State.

versus

AMIT KUMAR & ANR.

..... Respondents

Through: Ms. Inderjeet Sindhu, Advocate
(DHCLSC)

CORAM:

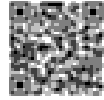
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 378 of Code of Criminal Procedure, 1973 has been filed on behalf of the State (*hereinafter referred to as the 'appellant'*) against the Order dated 10.07.2019 passed by the learned Additional Sessions Judge, Special Fast Track Court (North), Rohini, Delhi, whereby the accused/respondent No. 1/Amit Kumar (*hereinafter referred to as 'respondent No.1'*) and accused/respondent No.2/Gulshan (*hereinafter referred to as 'respondent No.2'*) were acquitted of the charges under Sections 376(2)G, 376/366/366A/354/506/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) registered *vide* FIR No. 172/2009 at Police Station Prashant Vihar, Delhi.

2. **The facts in brief** are that the main accused/Mintoo developed friendship with the minor victim, who was a student of Class X. On 19.03.2009, the victim was playing outside her house when accused/Mintoo threatened the victim to accompany him in a white Scorpio Jeep which was being driven by respondent No.2. Despite the



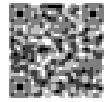
minor victim's protest, respondent No.2 kept on driving the vehicle and thereafter, respondent No.1 called the main accused/Mintoo. Accused/Mintoo took the minor girl to a flat in Sector-17, Rohini, where she saw co-accused/Ravinder @ Ashish who was taking liquor with Respondent No.2.

3. According to the victim, main accused/Mintoo took her to inner room and forcibly raped her. On raising noise, co-accused/Ravinder @ Ashish and Respondent No.1 threatened her to maintain silence. Thereafter, while accused/Mintoo went outside to bring a comb for her, the Respondent No.1 and accused/Ravinder @ Ashish came inside and asked why she was wearing clothes. Accused/Ravinder @ Ashish slapped her and removed her clothes and forcibly raped her. Further, when she went outside to the outer room after wearing clothes, respondent No.1 also tried to do "*jor jabardasti*" but he was unsuccessful.

4. Thereafter, she was asked by main accused/Mintoo to return to her home however, she did not go her home and stayed with respondent No.1 and main accused/Mintoo by stating that she apprehended that her father would beat her. When the victim went to her house next morning, she found TSR of her father standing outside the house and due to fear she went to her Bhabi Monika in Pragati Maidan. When her bhabhi sent her back in the evening, she still did not go home out of fear and kept on wandering here and there the entire night.

5. On 21.03.2009, she mustered courage and returned to her home at noon and divulged the entire incident to her father who took her Police Post where she reported the matter to the police.

6. On 22.03.2009, the present FIR No. 172/2009 registered at Police



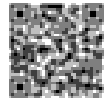
Station Prashant Vihar, Delhi and further investigation was done.

7. During the trial, the statement of prosecutrix under Section 164 Cr.P.C., 1973 was recorded by the learned Metropolitan Magistrate, Rohini Courts on 24.03.2009.

8. On 31.03.2009, the charge under Section 376(2)(g) of IPC, 1860 was framed against all the accused persons. A separate charge under Section 366 read with Section 34 IPC was framed against accused/Parvesh Rana @ Mintoo and Gulshan/ respondent No.2 Also a separate charge under and 506-II of IPC, 1860 was framed against accused/Parvesh Rana @ Mintoo and separate charge under Section 506 of IPC, 1860 was framed against accused/Ashish Sehrawat @ Ravinder and Amit Kumar/ respondent No.1.

9. During the trial, statements of 22 witnesses were recorded. The learned Additional Sessions Judge, after appreciating the entire evidence, held vide order dated 10.07.2019 that the prosecution had failed to prove the charge of gang rape. Moreover, the victim voluntarily accompanied accused/Parvesh Rana @ Mintoo and thus he was acquitted from the charges of kidnapping. The respondent No.2 and respondent No.1 were also acquitted from all the charge, while accused/Ashish Sehrawat @ Ravinder and Parvesh Rana were held guilty for offence under Section 376 of IPC, 1860.

10. *Vide* Order on Sentence dated 10.07.2019 convicts Parvesh Rana @ Mintoo and Ashish Sehrawat @ Ravinder were awarded punishment already undergone by them. A fine of Rs. 40,000/- and Rs. 60,000/- were imposed on Parvesh Rana and Ashish Sehrawat respectively. Out of the imposed amount on Parvesh Rana and Ashish Sehrawat, Rs. 80,000/- was



granted as compensation to the victim.

11. The prosecution has filed the present Appeal against the Order dated 10.07.2019 only for the offence under Section 376 of IPC, 1860 and challenged the acquittal under the other charges.

12. **Submissions heard.**

13. During the course of arguments, it was noticed that the charge under Section 376(2)(g) of IPC, 1860 was framed against all the four accused. The two accused, namely, Parvesh Rana and Ashish Sehrawat were convicted under Section 376, IPC. The other two accused/respondents herein were acquitted.

14. According to the prosecution, it was a case of gang rape and the acquittal of the respondents could not have been challenged unless the acquittal of the other two co-accused under Section 376 (2)(9), IPC was also challenged.

15. It is observed that Section 34 of IPC, 1860 cannot be invoked in the case of gang rape once the acquittal under Section 376 has not been challenged.

16. Accordingly, the present respondents cannot be roped in for the offence of gang rape by virtue of Section 34 of IPC.

17. We find not merit in the present Appeal and the same is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 09, 2023/S.Sharma

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