

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

Judgment delivered on: July 06, 2010

+ **CRIMINAL APPEAL NO.300/2008**

PURAN SINGH

....APPELLANT

Through: Mr. Rajesh Mahajan, Amicus Curiae

Versus

THE STATE OF NCT OF DELHI

.....RESPONDENT

Through: Mr. Pawan Bahl, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This appeal is preferred against the impugned judgment dated 17th August, 2007 and the consequent order on sentence dated 21st August, 2007 whereby the appellant Puran Singh has been convicted for the offence punishable under Section 376 and 363 IPC and sentenced him accordingly.

2. Appellant Puran Singh was employed at a Water Pump near Khajuri Khas. Prosecutrix (name withheld) was acquainted with him. On 03.04.2005, appellant Puran Singh induced the prosecutrix to

accompany him to Bareilly. Wazid, a young boy of 09 years and nephew of prosecutrix was also present at that time and the prosecutrix as well as Wazid agreed to go to Bareilly with the appellant. However, Wazid could not adjust at Bareilly, so the appellant sent him back to Delhi by making him board a bus from Bareilly to Delhi. On reaching Delhi, Wazid informed Mustaqueem, father of the prosecutrix about the incident.

3. Complaint Mustaqueem then approached P.S. Khajuri Khas and lodged a complaint which was registered as FIR No.138/05 under Section 363 IPC P.S. Khajuri Khas. On 07.04.2005, prosecutrix was spotted at Railway Station Shahdara. She was taken in the protective custody and sent to the hospital for medical examination. On medical examination at GTB Hospital, her hymen was found ruptured (old healed) and there were no marks of injury on her person. Her MLC is Ex.PA. Statement of the prosecutrix under Section 164 Cr.P.C. was got recorded wherein she stated that she was in love with the appellant and the appellant took her to Bareilly by inducement and misrepresentation. There she stayed with two sisters of the appellant for one night each and on such one night, they indulged in physical relationship as husband and wife. Said statement is Ex.PW1/A.

4. On 16.08.2005, appellant surrendered in the Court of Metropolitan Magistrate. He was formally arrested after seeking permission from the learned Magistrate and sent to hospital for

medical examination. On conclusion of investigation, charge sheet against the appellant was filed.

5. Appellant was charged for the offences punishable under Sections 363/376 IPC. Appellant pleaded not guilty to the charge and claimed to be tried.

6. In order to bring home the guilt of the appellant, prosecution examined 14 witnesses in all. However, the case of the prosecution is essentially based upon the testimony of the prosecutrix, who was examined as PW1, besides the medical evidence and the evidence relating to the age of the prosecutrix.

7. Prosecutrix has testified in the court that the appellant was known to her as he was working as a Watchman at Water Pump, near Khajuri Khas, Delhi. On 03.04.2005, appellant took her to Bareilly on the pretext of getting her good clothes besides good food. She was kept in a village near Bareilly for about four days where the appellant raped her against her will and consent. She claimed that when she accompanied the appellant to Bareilly, her nephew Wazid was with her. On 07.04.2005, the appellant brought her to Delhi and she was recovered by the police from Shahadra Railway Station. She was taken to hospital for medical examination and her statement (Ex.PW1/A) under Section 164 Cr.P.C. was recorded.

8. PW2 Mustaqueem has testified that the prosecutrix, his daughter, went missing on 03rd April about two years prior to the recording of her

testimony. His grandson Wazid also went missing with her. He however, thought that she might have gone to visit some relations. Two days later, Wazid returned and he told them that prosecutrix was with a boy named Puran. Thus, he went to the police station and lodged a report Ex.PW2/A. Two days later, prosecutrix met him and the police party at Railway Station, Shahdra but the appellant was not along with her. He further stated that he produced birth certificate of the prosecutrix before the investigating officer SI Saleem, who seized it vide memo Ex.PW2/B. He stated that photocopy of the birth certificate is Mark PX.

9. PW10 Somesh Kumar, Sub-Registrar, Births and Deaths, Shahadra, North Zone, Delhi testified on the basis of the birth register pertaining to the Karawal Nagar Centre of MCD for the year 1990. He deposed that as per the entry at serial No. 741 of the register, prosecutrix was born to Satara Begum, Wife of Mustaqueem and he proved the copy of relevant entry as Ex.PW10/A.

10. PW11 SI Mohd. Saleem is the Investigating Officer. He stated that on 05.04.2005, investigation of this case was entrusted to him. On that day, complainant Mustaqueem produced before him copy of birth certificate of the prosecutrix Ex.PX, which he took into possession vide memo Ex.PW2/B. He stated that on 07.04.2005, he received information that the prosecutrix was expected to reach Railway Station, Shahdra. Accordingly, he along with the complainant and the

police officials reached there. At about 09:00 or 09:30 am, on the pointing of the complainant, he recovered the prosecutrix. Her statement was recorded and she was sent for medical examination to GTB Hospital along with Lady Constable Geeta. On return, Constable Geeta handed over him the MLC (Ex.PA) and sample seal to him, which were seized vide memo Ex.PW5/A. On 12.04.2005, he got recorded statement of the prosecutrix under Section 164 Cr.P.C. He stated that on 16.8.2005, appellant surrendered before learned Magistrate, who was formally arrested and sent to GTB Hospital for medical examination.

11. Statement of appellant under Section 313 Cr.P.C. was recorded. Appellant denied the allegation of rape. He, however admitted that the prosecutrix had accompanied him to Bareilly and stayed with him for one night. According to him, she went on her own and he had no sex with her and that he has been falsely implicated.

12. Learned Sh. Rajesh Mahajan, Amicus Curiae appearing for the appellant has submitted that the learned Trial Court has committed a grave error in relying upon the testimony of the prosecutrix (PW1) pertaining to her forced sexual violation by the appellant. He submitted that the prosecutrix had voluntarily accompanied the appellant to Bareilly and the appellant did not have any sex with her. Therefore, neither the charge of kidnapping under Section 363 IPC nor charge under Section 376 IPC is made out.

13. Learned counsel for the State, on the other hand, has argued in support of the impugned judgment. He submitted that the prosecutrix, in her testimony, is categorical that she was induced by the appellant to accompany him to Bareilly where she was forced to indulge in sexual act with the appellant against her wishes. Learned counsel for the State submitted that aforesaid version of the prosecutrix finds corroboration from her MLC Ex.PA wherein it is recorded that her hymen was ruptured, which is generally possible because of sexual penetration. He submitted that otherwise also, there is no reason why the prosecutrix would depose falsely against the appellant at the cost of her honour. Thus, it is argued that learned Trial Court has rightly relied upon the prosecution evidence to hold the appellant guilty of charges under Sections 363 IPC as well as 376 IPC.

14. I have carefully considered the rival contentions. Prosecutrix who appeared as PW1 has claimed that on 03.04.2005, the appellant had taken her to Bareilly on the pretext of getting her good clothes as well as good food to eat. He kept her in a village near Bareilly for four days and during said period, he committed rape upon her against her will and consent. Aforesaid version of the prosecutrix, particularly regarding the rape against her consent, is not reliable because as per the prosecutrix, statement of the prosecutrix under Section 164 Cr.P.C. was recorded as early as on 12.04.2005. In the aforesaid statement Ex.PW1/A, prosecutrix has nowhere stated that she was subjected to sexual intercourse with the appellant against her wishes, though she

had stated that on one night, she and appellant indulged in physical relationship as husband and wife. From this version of the prosecutrix, it is apparent that she is not stating the truth so far as rape without her consent is concerned. However, the fact remains that sexual intercourse did take place between the appellant and the prosecutrix, which fact is also corroborated to some extent by the medical evidence i.e. MLC Ex.PA, which indicates that on medical examination conducted on 07.04.2005, hymen of the prosecutrix was found ruptured, which is an indication of the sexual intercourse. However, as per the medical evidence, no injury was found on the person of the prosecutrix, which also negatives the possibility of forced rape committed upon the prosecutrix.

15. Learned counsel for the State has submitted that even if it is assumed that it was an act of consensual sex with the prosecutrix, then also, his act in indulging in sex with the prosecutrix falls within the definition of rape as provided in Section 275 of the Indian Penal Code. Perusal of Section 275 IPC reveals that sexual intercourse with a girl below the age of 16 years, even with consent, amounts to rape. In the instant case, as per the testimony of PW10 Somesh Kumar, Sub-Registrar, which is based upon the birth register of year 1990 maintained at Karawal Nagar Centre of MCD, prosecutrix was born on 25.04.1990 to Satara Begum Wife of Mustaqueem, who are the parents of the prosecutrix. From this, it is evident that at the relevant time i.e. 03.04.2005 to 07.04.2005, the prosecutrix was aged 15 years and few

days. Thus, the sexual act committed by the appellant with the prosecutrix during said period falls within the definition of rape. As such, I find no infirmity in the finding of the learned Trial Judge holding the appellant guilty of kidnapping of prosecutrix from legal guardianship of her parents and rape punishable under Sections 363 and 376 IPC. Thus, there is no reason to interfere with the conviction of the appellant.

16. Learned amicus curiae has also challenged the impugned judgment on the point of sentence. He submitted that RI of seven years for the offence under Section 376 IPC awarded to the appellant is too harsh, particularly when, the prosecutrix herself was the consenting party to the sexual act. He submitted that the prosecutrix was physically mature and from her appearance, one could not have anticipated that she was below 16 years of age. Learned amicus curiae further submitted that the appellant was a young man of 21 years at the relevant time without any criminal antecedents. He belongs to a poor family which is dependent upon his earning. Thus, in view of the aforesaid circumstances, he has strongly urged for reduction of the sentence.

17. The proviso to Section 376 (1) of Indian Penal Code provides that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 7 years. In the instant case, admittedly, prosecutrix indulged in

sexual activity with the appellant of her own volition without any pressure or threat. She, as per her statement under Section 164 Cr.P.C. did not resist or raise any hue or cry and she also, as per her testimony in court did not tell the other persons living in the house at Bareilly, though she used to talk with those persons. The appellant has been in incarceration, as per the nominal roll, for a period of more than 4 years. In view of the aforesaid mitigating factors coupled with the fact that the appellant is a young man belonging to a poor strata of society, having no previous criminal antecedents, I hereby reduce the sentence awarded to the appellant under Section 376 IPC from 07 years to 05 years while maintaining the fine and also maintaining the sentence awarded to the appellant under Section 363 IPC. Both the sentence shall run concurrently. Needless to say that appellant shall get benefit of Section 428 Cr.P.C.

18. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

JULY 06, 2010
pst