



2025:DHC:342



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

% Reserved on: 10.12.2024
Pronounced on: 22.01.2025

+ **CRL. A. 304/2009**

RAJNEESH Appellant

Through: Mr. G.S. Sharma, Mr. V.K. Sharma,
Mr. R.A. Sharma, Mr. Akhilesh and
Mr. Arvind Nagar, Advocates.

Versus

THE STATE N.C.T. OF DELHI Respondent

Through: Ms. Manjeet Arya, APP for State with
Inspector Dinesh Chandra.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 07.03.2009 and order on sentence dated 09.03.2009 passed by learned ASJ, Karkardooma Courts, New Delhi in Sessions Case No. 99/2008 arising out of FIR No.533/2007 registered under Sections 363/366/376/328 IPC at P.S. Khajuri Khas, Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 328/366/376/363 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years for the offence



punishable under Section 363 IPC with a fine of Rs 2000/- in default whereof, he was directed to undergo further rigorous imprisonment for 3 months. For the offence punishable under Section 366 IPC, the appellant was directed to undergo rigorous imprisonment for 5 years along with a fine for Rs. 5000/, in default where of he is directed to undergo further rigorous imprisonment of 6 months. With respect to the offence of section 328 of IPC the appellant was directed to undergo rigorous imprisonment of 3 years along with a fine of Rs. 2000/- in default where of he was directed to undergo further rigorous imprisonment of 3 months. Lastly, for the offence under Section 376 IPC, the appellant was directed to undergo rigorous imprisonment for 7 years with a fine of Rs 10,000/-, in default whereof, he was directed to undergo further rigorous imprisonment for 1 year. The said sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C was also extended to the applicant.

2. The facts, as noted by the Trial Court, are as under:-

'Kanchan (name changed) went missing, since 7 AM of 19.11.07. She left for her school in morning hours that day. When she did not return home, her father Ramesh lodged a missing report with the Police. He raised an accusing finger against accused, Rajneesh, who was residing in his neighbourhood and missing too from his house. On 29.11.07, Kanchan reached her house after consumption of some intoxicant. She was taken to hospital, where gavage lavage was got done. Thereafter, Roopwati, mother of Prosecutrix, brought Kanchan to PS, where her statement was recorded. Kanchan was taken to a magistrate, who recorded her statement under section 164 of Code of Criminal Procedure, 1973 (in short the Code). During the course of investigation, accused Rajneesh was arrested. Both Kanchan and Rajneesh were medically examined. Investigation culminated into a chargesheet against the accused.'

3. The appellant pleaded not guilty and claimed trial. The prosecution examined a total of 12 witnesses to prove its case. The victim was examined



as PW3. Dr. Sapna was examined as PW9 to prove the MLC of the prosecutrix. As per case of prosecution, the prosecutrix was 14 and ½ years of age at the time of incident and to prove the same examined PW4, a teacher of the School attended by the prosecutrix. The other witnesses were formal in nature relating to various aspects of investigation.

The appellant in his statement recorded under Section 313 Cr.P.C. claimed innocence and stated the Prosecutrix has deposed against the appellant under the pressure of her parents.

4. Learned counsel for the appellant referred to the cross examination of PW1 as well as PW2 to contend that the prosecutrix was a major at the time of occurrence of the alleged offence. It was further submitted that a perusal of the statement of prosecutrix recorded under Section 164 CrPC, her court deposition and the MLC would show that she was a consenting party and as such, no offence under Section 376 is made out against the appellant. In this regard, reference was also made to the diary exhibited as Ex. D-1 and letters exhibited as Ex. D-2 to D-5 that were written by the prosecutrix to the appellant expressing her love towards him. It is lastly submitted that the testimonies of witnesses do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures.

5. Learned APP for the State while opposing the present appeal defended the impugned judgment and emphasized that the appellant was rightly convicted in light of the material that came on record.

6. I have heard the learned counsels for the parties as well as perused the material placed on record.



7. A reading of the testimony of the prosecutrix would show that on 19.11.2007, she met the appellant near her school and thereafter accompanied him to Haryana where she resided with him for 9 days. The prosecutrix further deposed that during this stay, the appellant had established sexual relations with her consent and that they were living as husband and wife. The appellant has contended that the prosecutrix even at the time of recording of her MLC as well as statement under Section 164 Cr.P.C stated that she went with the appellant on her own wish.

The primary issue that requires consideration is whether the prosecution has conclusively proved that the prosecutrix was a minor at the time of the offence and could not be deemed to have comprehended the consequences of her actions.

8. To prove the age of prosecutrix, the prosecution has relied on the oral evidence in the form of testimonies of the prosecutrix and her parents as well as her school records. In this regard, the prosecution examined one Anand Mittal (PW-4), a teacher at the school that was attended by the prosecutrix. A perusal of his testimony would show that the prosecutrix's name was registered at Sl. No. 4824 in the school admissions register and her date of birth was recorded as 10.05.1993. The witness further deposed that the prosecutrix was admitted in the said school in the 4th standard on 25.07.2002 and the date of birth in the admission register was recorded on the basis of an affidavit furnished by her parents. The admissions register was exhibited as Ex PW4/A.

9. Learned counsel for the appellant has only sought to create doubt on the prosecutrix' age by referring to the random parts of parents' deposition.



It was submitted that the prosecutrix's parents deposed that they were married about 20 years ago, the prosecutrix was their eldest child and was born after 2.5 years of their marriage the age of the prosecutrix. In this backdrop, learned counsel contended that it can be inferred that the prosecutrix was above 18 years as the said depositions were recorded after one year of the incident. Pertinently, the authenticity of the aforementioned school admission register was not challenged in as much as no suggestion was put to the witness if the same was prepared afterwards or manipulated in any manner. In fact, no such suggestion doubting the correctness of prosecutrix' age in school record was put either to her or the parents. Even if a calculation is made in terms of appellant's contentions, the prosecutrix still remains a minor on the date of incident.

10. This Court finds no merit in appellant's aforementioned contentions to doubt the authenticity or correctness of the school admission register especially when no such challenge was raised at the time of recording of the testimonies of relevant witnesses during the trial. Even in provisions under the JJ (Care and Protection of Children) Act and the Rules framed thereunder give primacy to the school certificate. Besides, the courts have repeatedly accepted the school admission register as a proof of the age of the prosecutrix. [cf: Farid Khan v. State of Madhya Pradesh & Anr in **Crl.A. 8359/2023** dated 23.01.2024, Ram Prasad v. State of Maharashtra, reported as **2018 SCC OnLine Bom 1315** and Surjeet Kumar v. State, reported as **2023 SCC OnLine Del 215.**]

11. In the backdrop of facts and evidence that have come on record, this Court is of the considered opinion that the testimonies of prosecutrix and her



2025:DHC:342



parents are reliable and trustworthy. The prosecution has been able to prove that on the date of incident, the prosecutrix was only 14.5 years of age and as such her consent, if any, was immaterial. Having held so, the Court finds no reason to interfere with the appellant's conviction and sentence, which are upheld.

12. The appeal is accordingly dismissed.

13. A copy of this judgment be sent to the concerned trial court as well as to the Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 22, 2025/jjp