

\$~28

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

+ **CRL.L.P. 383/2014**

STATE

..... Petitioner

Represented by: Ms.Aashaa Tiwari, APP for the
State with SI Chetan Nandia,
PS Sagar Pur.

versus

RAHUL & ORS

..... Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

31.07.2014

Crl.M.A.Nos.9148/2014 (delay in filing) and 9149/2014 (delay in refiling)

1. For the reasons stated in the applications the delay in filing and refiling is condoned.
2. Applications are disposed of.

CRL.L.P. 383/2014

1. The State impugns the judgment dated May 31, 2013 whereby the Respondents have been acquitted of the charge under Sections 366A/368A/372/376/34 IPC. The learned Trial Court had granted the benefit of doubt to the Respondents in view of the inconsistent testimonies of the witnesses contradicting each other and the prosecution having not proved that the Prosecutrix was a minor.
2. The facts in brief are that the Prosecutrix went missing on February

02, 2012. Her father PW-11 Nand Kishore lodged a complaint at the Police Station Ex.PW-11/A. He suspected that Rahul had taken away his daughter as Rahul was also missing from the date his daughter was missing i.e. February 02, 2012. He further deposed before the Court that on May 03, 2012 he received a call from his daughter who asked him to reach Sonapat Bus Stand. When he went there he found that his daughter was standing at the bus stand. Thus she was recovered. Rahul was arrested.

3. The Prosecutrix who appeared as PW-4 deposed that on February 02, 2012 while going to school she met Rahul who asked her to accompany him to his village. She accompanied Rahul to Hardoi by train from where Rahul took her to his village, from where he took her to the house of his maternal aunt. In the night she slept with the aunt of Rahul however, thereafter Rahul started sleeping with her and committed rape for 1½ months. Thereafter Rahul took her to Sonapat where she was kept for 1½ months and from there she ran away from the custody of the accused. While she was at Sonapat, accused Ram Kumar told her that he would sell her for ₹30,000/- which fact was also accepted by Rahul. In the cross-examination this witness admitted that she knew Rahul for the last two years. She also admitted that while going with Rahul neither she informed her parents nor her elder sister, who was studying in the same school. According to her she acted under the influence of Rahul. She did not raise any alarm either at the Delhi Railway Station or anywhere thereafter. There was a phone in the house of the aunt of Rahul and despite having the mobile number of her father, she made no call to him. She also admitted that the house of the maternal aunt of Rahul did not consist of any room but was a temporary tarpaulin covered area of 25 sq.yards where the maternal uncle, maternal aunt and their four children

were also residing.

4. The learned Trial Court found contradictions in the version of the father of the Prosecutrix, the police officers and the Prosecutrix as to from where the Prosecutrix was recovered. The evidence on record also reveals that nothing has been placed to prove the age of the Prosecutrix except the ossification test. As per the report of the ossification test PW-18/A the Prosecutrix was opined to be between 17-19 years. Thus the benefit if at all has to be given to the accused persons and the Prosecutrix being more than 18 years old, the learned Trial Court held that the charge under Sections 363 IPC and 366A IPC must fall. The learned Trial Court taking into account the fact that the house of the maternal aunt where the Prosecutrix stayed was a temporary tarpaulin covered room where besides these two six other family members were staying came to the conclusion that it was not possible for the accused to have committed rape of the Prosecutrix contrary to her wishes. The learned Trial Court held that the close scrutiny of the testimony of the Prosecutrix did not inspire confidence and on the basis of attending circumstances it could be well deciphered that the Prosecutrix voluntarily accompanied Rahul to his native village in Hardoi and stayed there at the house of his Aunt for 1½ months of her own free will. The allegations that she was told that she was sold was also an improvement to her statements recorded under Sections 161 and 164 Cr.P.C.

5. The recovery of the Prosecutrix from the bus stand was also doubtful as the Prosecutrix stated that her father and police officers reached the house of sister-in-law Manju whereas her father stated that the Prosecutrix met at Sonapat Bus Stand however, the police officials stated that Manju did not meet them on that date.

6. Thus while granting benefit of doubt to the respondents learned Trial Court acquitted them of the charges framed and in view of the discussion aforesaid we find no infirmity in the impugned judgment.

7. Leave petition is dismissed.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JULY 31, 2014

‘vn’