

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

+ **CRL.A. 282/2011 & CrI. M.B. 188/2013**

% Reserved on: 13<sup>th</sup> February, 2013  
Decided on: 25<sup>th</sup> April, 2012

RAMESH PATEL @ RAHUL ..... Appellant

Through: Mr. B.L. Goswami, Advocate.

versus

STATE ..... Respondent

Through: Mr. Manoj Ohri, APP with SI Anil  
Kumar, PS Sangam Vihar, Delhi.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present petition the Appellant impugns the judgment dated 6<sup>th</sup> January, 2011 whereby the Appellant was convicted for offence under Sections 376/506 IPC and the order on sentence dated 11<sup>th</sup> January, 2011 whereby he was directed to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs. 2,000/- for offence punishable under Section 376 IPC and in default of payment of fine to further undergo Simple Imprisonment for six months and Rigorous Imprisonment for two years and a fine of Rs. 1,000/- for offence under Section 506 IPC and in default of payment of fine to further undergo Simple Imprisonment for two months.

2. Learned counsel for the Appellant contends that since the school certificate of the prosecutrix was not sufficient proof of the age, the prosecution ought to have got the ossification test conducted. At the time of incident the prosecutrix was above 18 years of age even as per the statement of the witnesses. PW5, father of the prosecutrix stated that he was settled in Delhi in 1989 and thus the prosecutrix was above 18 years. Neither any

record from the hospital nor the MCD was asked to verify the factum of age nor was any witness from neighbourhood examined. Further the prosecutrix admitted that she performed intercourse with the Appellant 12-14 times. Since she never disclosed this incident to anybody else and kept silent it is clear that she was a consenting party. The FIR was registered belatedly. The prosecutrix did not allege that she was threatened with knife by the Appellant either in the FIR or in her statement under Section 161 Cr.P.C. and thus the statement before the Court was a clear improvement. The learned Trial Court noticed that there were contradictions in the testimony however, ignored them as trivial in nature though they were material contradictions. Further as per the statement of PW5 there were complaints about number of other boys who were teasing his daughter however, the Appellant was never named in them. Reliance is placed on *Jabar Singh vs. Dinesh and another, 2010 (3) SCC 757* and *Sunil Kumar Sharma vs. State of NCT of Delhi, 2011 CrL. L.J. 4996*.

3. Learned APP for the State on the other hand contends that the hymen was torn, PW1 has not been cross-examined by the Appellant and thus his testimony has gone unchallenged. The prosecutrix was pregnant when she revealed the entire incident to her mother who took her to the police and got her statement recorded on 27<sup>th</sup> September, 2006 Ex. PW1. The DNA of the foetus matched with that of the Appellant and the prosecutrix and thus it has been established beyond reasonable doubt that the Appellant committed sexual intercourse with the prosecutrix. Further the Appellant in his statement under Section 313 Cr.P.C. has nowhere admitted commission of sexual intercourse however, his defence was that the prosecutrix compelled him to satisfy her desire of having sex with him. As regards the age of the

prosecutrix, the school certificate clearly mentions the date of birth as 24<sup>th</sup> November, 1990 which showed that she was less than 16 years of age at the relevant time. The prosecutrix being a minor her consent was immaterial. There is overwhelming evidence against the Appellant and thus no case of acquittal is made out and the appeal be dismissed.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution is that on 27<sup>th</sup> September, 2006 the prosecutrix reported to the police post Sangam Vihar along with her parents that she was sexually abused by the Appellant. Thus Ms. Aparna from NGO Prayas was called and the prosecutrix was taken for medical examination by ASI Nirmala. As per the MLC Ex. PW1/A the prosecutrix was reported to be pregnant. The statement of the prosecutrix was recorded vide Ex. PW3/A wherein she alleged that the Appellant used to come to her house for charging mobile being a neighbour. During March, 2006 when the Appellant came to her house, none was present. He wanted to establish physical relations with her however, she refused. The Appellant threatened her that if she did not do so he would kill her brother. On the next day, the Appellant again came, threatened her and forcibly established physical relation. Thereafter whenever the Appellant found the prosecutrix alone at home he would come and threatened her not to open her mouth and established physical relationship. The prosecutrix stated that from March to May-June, the Appellant established relations with her 12-14 times. Since she developed some problem she consulted the doctor on 23<sup>rd</sup> September, 2006 when she came to know that she was pregnant and then she told the entire incident to her family members. The prosecutrix PW3 reiterated her statement made to the police before the Court. The prosecutrix has been

cross-examined at length by the learned defence counsel. In her cross-examination she reiterated that she was born in the year 1990 and she studied upto 5<sup>th</sup> class in Nagar Nigam Prathmik Kanya Vidhayala, F-2 Block, Sangam Vihar, New Delhi. In sixth class she took admission in Senior Secondary Delhi School, Deoli, New Delhi. She clarified that her mother used to go to Anganwadi to do her job and when the Appellant found her alone, he would come to their house.

6. PW5, the father of the prosecutrix stated that the date of birth of his daughter was 24<sup>th</sup> November, 1990 and she had studied up to fifth class in a Government School at Sangam Vihar. He brought the original school leaving certificate which was taken on record. PW11 Kamleshwar Prasad from MC Primary Girls School-I Deoli was examined who stated that as per the school record the date of birth of the prosecutrix was 24<sup>th</sup> November, 1990. He has produced all the original records including the affidavit filed by the father of the prosecutrix at the time of admission. Thus from the evidence of PW3, PW5 and PW9 it is established beyond reasonable doubt that the prosecutrix was below 16 years of age when the alleged offence was committed by the Appellant. Reliance of the learned counsel for the Appellant on *Sushil Kumar Sharma* (supra) is misconceived. In the said case the date of birth was sought to be proved on the basis of an entry in the school record two months prior to the incident. The case of the prosecutrix and her mother therein was that the prosecutrix was for the first time admitted directly in class 8<sup>th</sup> that too in the mid session where her mother was working as Aya. From the letters written by the prosecutrix it was evident that she was well conversant with Hindi and English writing and it could not be possible that she was for the first time admitted in the school

that too in class 8<sup>th</sup> in mid session two months prior to the alleged incident and thus this Court was compelled to discard the evidence of age based on the said certificate.

7. In the present case the offence of rape committed by the Appellant has been established beyond reasonable doubt in the present case. When the prosecutrix was examined she was pregnant, thus the foetus was aborted. The aborted foetus was examined along with the fresh blood samples of the Appellant and the prosecutrix. Doctor Anupama Raina, who examined the foetus and gave DNA report, has not been cross-examined by the Appellant. The report of the DNA states as under:

- “1. DNA extracted from the Ex.199 (aborted foetus), Ex.200 (Fresh blood sample of Ramesh), Ex. 201 (fresh blood sample of Shashi) and has amplified at all loci.
2. DNA profile obtained from Ex. 199 (aborted foetus), shares the maternal alleles with DNA profile obtained from Ex. 201 (fresh blood sample of Ms. Shashi Bala).
3. Also, on comparison of DNA profile obtained from the Ex.199 (aborted foetus) shares the paternal allele with DNA profile obtained from the exhibit 200 (fresh blood sample of Ramesh Patel @ Rahul).”

8. Thus the DNA profile of the aborted foetus matched with the DNA profile of the Appellant. Further the Appellant in reply to question Nos. 7, 8 and 10 asked to him under Section 313 Cr.P.C. has admitted sexual intercourse however, his explanation is that the prosecutrix herself compelled him to satisfy her desire of having sex with him. As noted above even taking the defence of the Appellant that the prosecutrix was a consenting party the same is of no help to the Appellant. It has been proved

beyond reasonable doubt that the prosecutrix was less than 16 years of age at the time of alleged incident and thus her consent was immaterial.

9. In view of the aforesaid discussion, I find no infirmity in the impugned judgment of conviction and order on sentence. The appeal and application are accordingly dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**APRIL 25, 2013**  
**'vn'**