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**Sanjay Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/956454

**Court** : Delhi

**Decided On :** May-16-2013

**Judge** : G.P. Mittal

**Appellant** : Sanjay

**Respondent** : State

**Judgement** :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

16. h May, 2012 + CRL.A. 1366/2012 & Crl.M.(B).2112/2012 SANJAY ..... Appellant Through Mr. Sumer Kumar Sethi, Advocate along with Appellant in judicial custody versus STATE ..... Respondent Through Ms. Rajdipa Behura, APP CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.(ORAL) 1. The Appeal is directed against a judgment dated 25.07.2012 and an order on sentence dated 08.08.2012 passed by the learned Additional Sessions Judge(ASJ) in Sessions Case No.90/2011 FIR No.280/2011 P.S. Burari whereby the Appellant was held guilty for the offences punishable under Sections 366 and 376 IPC. He was sentenced to undergo RI for five years and to pay a fine of `5,000/- or in default to undergo SI for one month for the offence punishable under Section 366 IPC. He was further sentenced to undergo RI for seven years and to pay a fine of `10,000/- or in default to undergo SI for two months for the offence punishable under Section 376 IPC.

2. On the last date of hearing, at the request of the learned counsel for the Appellant production warrants were issued for appearance of the Appellant. The Appellant is present in custody in pursuance of the production warrants.

3. On instructions from the Appellant, the learned counsel for the Appellant does not want to address any arguments on merits. The only plea raised by the learned counsel for the Appellant is that the Appellants case falls in the proviso to Section 376(1) IPC and a lenient view may be taken while awarding sentence to him. It is urged that the age of the prosecutrix on the date of the commission of the offence was established to be 15 years and 08 months. The prosecutrix accompanied the Appellant in a bus and in a train and then stayed with him at Lucknow for three days. She admitted that the Appellant went out to bring food for her and he also got a sari for her from the market. He urges that the prosecutrix did not raise any alarm and thus it was a case of consensual sexual intercourse. The learned counsel urges that in fact the prosecutrix had married the Appellant but he was unable to prove the factum of marriage and thus since the prosecutrix was less than 16 years of age, the Appellant is guilty of the offence of rape but he may be awarded punishment less than the minimum prescribed.

4. The learned APP opposes the plea for taking a lenient view urging that the offence of sexual molestation is on the rise and a punishment less than the minimum prescribed should not be awarded.

5. The legislature in its wisdom made a provision for awarding a sentence of less than seven years when there are special and adequate reasons for the same. I have before me the prosecutrixs testimony. It goes without saying that the prosecutrix merrily proceeded with the Appellant most willingly. She travelled with him in a bus and then in a train to Lucknow. The prosecutrix was brought back to Delhi by the Appellant himself where the Appellant and the prosecutrix were apprehended at New Delhi Railway Station by the police. Thus, although the Appellant does not want to contest the Appeal on merits, it is borne out from the record that it was a case of consensual intercourse with the prosecutrix. While awarding punishment, the Court has to take into consideration the mitigating and aggravating circumstances. The prosecutrix was aged 15 years and 08 months

and she was incapable of giving the consent for sexual intercourse. I have seen numerous cases where the girls sometimes less than 16 years of age take a lead in eloping with a boy, enters into a marriage with the boy and have sexual intercourse with him. Such a predicament was noticed by this Court in several cases including in two judgments passed by the Division Benches of this Court, namely, Manish Singh v. State Govt. of NCT & Ors., AIR 200.Delhi 37 and Bholu Khan v. State of NCT of Delhi & Ors. (W.P.(Crl) 1442/2012) decided on 01.02.2013.

6. Considering the age of the prosecutrix and the facts narrated above, in my view, it is a fit case where sentence less than the minimum should be awarded. Similar view was taken and sentence less than minimum was awarded by a learned Single Judge of this Court in Brij Pal v. State (Crl.Appeal No.278 of 2000) decided on May 31, 2011. I accordingly sentence the Appellant to undergo RI for four years and to pay a fine of `2,500/- for each of the offences under Sections 366 and 376 IPC, and in default of payment of fine, the Appellant shall undergo SI for one month each. Both the substantive sentences shall run concurrently.

7. The Appeal is allowed in above terms.

8. Pending Applications stand disposed of.

9. A copy of the judgment be transmitted to the Superintendent Jail concerned for information. (G.P. MITTAL) JUDGE MAY 1., 2013 pst

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