

State vs 1. Rahul Parashar @ Sonu S/O Shyam on 1 March, 2011

IN THE COURT OF SH. RAMESH KUMAR - II, LD. ADDITIONAL
SESSIONS JUDGE - 01 : North- East / KARKARDOOMA COURTS:
DELHI.

Case ID Number.	02402R0531152006
Sessions Case No.	103/2006
Assigned to Sessions.	16.09.2006
Arguments heard on	22.02.2011
Date of order.	01.03.2011
FIR No.	216/2006
State Vs	1. Rahul Parashar @ Sonu s/o Shyam Kishan, r/o House No.111, Gal No.38, West Karawal Nagar, Delhi. 2. Bal Kishan, s/o Vishwanath, r/o G- 18/371, West Karawal Nagar, Delhi. (Acquitted on 05.02.2011)
Police Station	Khajuri Khas
Under Section	363/366/376/34 IPC

JUDGEMENT

1. Station House Officer of Police Station Khajuri Khas had filed a challan vide FIR no. 216/2006 dated 24.05.2006 u/s 363/366/376/34 IPC for the prosecution of accused persons namely Rahul Parashar and Bal Kishan in the court of Ld. Metropolitan Magistrate and Ld. MM after compliance of section 207 Cr. P.C. committed this case for trial before this court. Keeping in view of section 228 (A) IPC and directions of Supreme court in "State of Karnataka Vs. Puttraj 2004 (1) SCC 475" and "Om Prakash Vs. State Vs. Rahul Parashar and others State of U.P. 2006, CRLJ. 2913", the name of prosecutrix not being given in the judgment.

2. In brief, facts of the case are that on 15.05.2006 complainant Mahavir Singh had lodged a report at PS Khajuri Khas regarding missing of prosecutrix. Thereafter, on 23.05.2006 IO ASI Rajender Singh went to the house of complainant Mahavir and he told to IO that prosecutrix has been enticed by one Sonu @ Rahul with the help of Bal Kishan and in this regard statement of complainant was recorded vide Ex.PW6/A, upon which police had recorded FIR No.216/2006 u/s 363 IPC dated 24.05.2006. Thereafter, on 26.05.2006, at the instance of complainant prosecutrix was recovered from ISBT, Sarai Kalen Khan vide recovery memo Ex.PW6/B. Accordingly, during the course of investigation police arrested accused Rahul Parashar and Bal Kishan and accordingly filed the challan u/s 363/376/366/34 IPC in the court of Ld. MM.

3. On the basis of material available on record ld. predecessor of this court framed a charges vide order dated 25.01.2007 against accused Bal Kishan for the offences punishable u/s 366/109 IPC and against accused Rahul Parashar for the offences punishable u/s 363/366/376 IPC to which accused persons did not plead guilty and claimed trial.

4. In order to prove its case prosecution has examined 18 witnesses namely State Vs. Rahul Parashar and others PW1 ASI Yashpal, PW2 Shiv Hari, owner of the hotel where accused and prosecutrix were stayed, PW3 Prosecutrix, PW4 Smt. Kapoori Devi, mother of prosecutrix, PW5 Lady Ct. Sudha, PW6 Mahavir Singh, complainant, PW7 Ct. Kamal Kishor, PW8 Gopal, PW9 Dr. Poonam Yadav, PW10 HC Sohan Lal, PW11 Namrata, PW12 ASI Rajender Singh, PW13 Dr. Vipin, PW14 Madan Lal, PW15 D.K. Tyagi, PW16 Abadh Kumar Katiyar, PW17 Sh. R.K. Tripathi, Ld. ACMM, Tis Hazari Courts and PW18 V. Shankarnarainan.

5. PW1 ASI Yashpal is a formal witness being Duty Officer. This witness has recorded FIR No.216/06 u/s 363 IPC Ex.PW1/A on the statement of complainant Mahavir Singh. In his cross examination by Ld. Defence counsel, he admits that there is a cutting in statement Ex.PW1/A in column No.3 at point X.

6. PW2 Shiv Hari. This witness has deposed that he is running one hotel by the name of Sharda Hotel in Gwalior. This witness has got exhibited photocopy of hotel register Ex.PW2/A where accused Rahul Parashar and prosecutrix had stayed together. This witness has also deposed that as per entry of the said register, on 15.05.2006 one Rahul Parashar along with prosecutrix stayed in the hotel and they arrived at 3:30 p.m. on that day and they left the hotel at 2:30 p.m. on 17.05.2006 and the entry in this regard was made by accused itself. In his cross examination, this witness admits State Vs. Rahul Parashar and others that the entry in the register has been made by accused himself and other entries appearing in the register are also in the hand of customers.

7. PW3 Prosecutrix is a material witness. She has deposed that on 14.05.2006 she went to Jhansi with Sonu @ Rahul Parashar by train and thereafter on 15.05.2006 they then proceeded to Gwalior. She further deposed that there accused Rahul Parashar took her to Sharda lodge and they stayed there for two days. She further deposed that accused Rahul Parashar committed rape upon her in the lodge without her consent. She has further deposed that on 17.05.2006 accused Rahul Parashar took her to Jammu and from 17.05.2006 to 20.05.2006 they stayed in Jammu at Katra in one room where accused Rahul Parashar also committed rape upon her. She has further deposed that on 21.05.2006 they left Jammu and reached Delhi on 22.05.2006 and on 22.05.2006 accused Rahul Parashar brought her at Karkardooma Courts and accused obtained her signatures on some written documents. However, she asked accused regarding these documents but he did not tell her.

8. She further deposed that accused made a call at his house and father and uncle of accused reached at Sadar Bazar where accused give her Rs.6000/- in Sadar Bazar for going to Gwalior and she had gone to Gwalior alone by train. She further deposed that accused asked her to wait at Railway station by saying that he will come there but accused Rahul Parashar did not reach State Vs. Rahul Parashar and others at Gwalior. She has further deposed that she remained at Gwalior Railway station for one and half day. She further deposed that thereafter, her mausa namely Pappu reached at Gwalior and met her at Station and told her that her parents are very angry upon her and they will not allow her entry in the house and he took her to his house in Gwalior. She further deposed that on 26.05.2006 without informing her mausa prosecutrix boarded a bus and reached at Delhi. This witness was cross examined by Ld. APP on certain material facts of her statement made before Ld. MM. During the cross examination by Ld. APP, this witness admits her signatures on

marriage deed Ex.PW3/A at point A, B and C but she has refused to gone through these documents. In his cross examination by Ld. APP she has deposed that she has stated before Ld. MM in her statement that accused committed rape on 16.05.2006 twice in the night without her consent. She further deposed that accused Rahul Prashar took her to Mata Veshno Devi and got her signatures on one blank paper.

9. This witness was cross examined in detail by Ld. Defence counsel. In her cross examination, she admits that she did not make any complaint to anyone that accused had brought me forcibly and she never made any complaint to any person within two days regarding the conduct of accused at Sharda Hotel. She further deposed that after staying two days at Hotel Sharda, Gwalior, they left for Jammu/Katra by train. She also admits that neither at railway station nor during that journey she never made any State Vs. Rahul Parashar and others complaint to anybody that accused is taking her away forcibly. She also admits that in Jammu/Katra he visited Vaishno Devi Mandir and during that journey also she did not make any complaint to anybody regarding forcible taking her away by accused Rahul Prashar. She also admits that accused Rahul Prashar has been suffering from Polio in his leg. She also admits that police personnel at Katra Yatra Parchi counter were present but she did not make any compliant to those police personnel about the conduct of accused. She further admits that police personnel at Railway Station Gwalior, Jammu and Yatra Parch Counter, Katra were present but she did not make any compliant to police regarding conduct of accused. She further deposed that during period from 14.05.2006 to 22.05.2006 neither she objected nor make any complaint to anybody regarding what had been happened to her.

10.PW4 Kapoori Devi is the material witness being the mother of prosecutrix. She deposed that her daughter was playing in the gali on 14.05.2006 but she did not return to her house. She further deposed that accused Rahul used to visit her house and she had shown her suspicion upon accused Rahul as he was also missing from his house and her husband had lodged report of kidnapping of her daughter. In her cross examination she deposed that she did not got register date of birth of prosecutrix with the registrar of birth and death in Delhi. She further deposed that her husband had got admitted prosecutrix in school. Further this witness deposed that she does State Vs. Rahul Parashar and others not remember what date was mentioned at the time of admission of prosecutrix in the school. In her cross examination, this witness admits that accused Rahul Parashar was in visiting terms with her family. She further admits that there are her some relatives residing to adjacent to his house in neighbourhood who are maternal aunty of prosecutrix but this witness does not know the name of those persons. She further admits in her cross examination that she was well in notice about the affairs of prosecutrix with accused Rahul Parashar before the incident. On this fact, she further deposed that she tried to make understand the prosecutrix but prosecutrix told her that accused Rahul Parashar talked indecently but prosecutrix did not disclose those indecent talks, however, accused was in friendly terms with the family members of prosecutrix.

11.PW5 Lady Ct. Radha. This witness accompanied IO to ISBT along with father of prosecutrix to bring the prosecutrix as she was identified by her father and she took the prosecutrix to GTB Hospital for her medical examination.

12.PW6 Mahavir Singh is the material witness being the father of prosecutrix/complainant. This witness deposed that prosecutrix was aged about 16 years and two months on the day of incident. On 14.5.2006 around 1:00 p.m. prosecutrix left his house without telling anybody. This witness got suspicion upon accused Rahul who was in visiting terms with State Vs. Rahul Parashar and others his family and prosecutrix and thereafter, complaint of missing of prosecutrix was lodged with PS Khajuri Khas. This witness enquired about accused Rahul Parashar at his residence but he was found missing and then he went to uncle of accused Rahul Parashar who told him that accused Rahul Parashar and prosecutrix are at Gwalior and they will return in one or two days. This witness accompanied police officer to Sarai Kalen Khan where prosecutrix met him but accused Rahul Parashar was not there. He further deposed that at the time of incident prosecutrix was studying in the Govt. School at Karawal Nagar. This witness had handed over copy of marksheet showing date of birth of prosecutrix is 02.05.1990. In his cross examination this witness had admitted that accused Rahul Parashar is suffering from polio disease in his left leg. This witness had denied regarding filing of any birth certificate of prosecutrix at the time of her admission in the school. This witness had got admitted prosecutrix in school.

13.PW7 Ct. Kamal Kishore. This witness joined the investigation of the present case with IO and this is the witness of arrest of accused Rahul. He proved the arrest memo of accused Ex.PW7/A and personal search memo vide Ex.PW7/B. Disclosure statement of accused Rahul Parashar Ex.PW7/C was also recorded in his presence. This witness took the accused Rahul Parashar to GTB Hospital for his medical examination and after the medical examination he received a sealed pullanda form doctor State Vs. Rahul Parashar and others which he handed over to IO who seized the same vide seizure memo Ex.PW7/D. This witness deposed that at the time of arrest, accused Rahul Parashar had handed over two affidavits regarding his marriage with prosecutrix and same were seized vide seizure memo Ex.PW7/E. In his cross examination, this witness admits that he know the accused Rahul Parashar prior to his arrest.

14.PW8 Gopal is a hostile witness. He deposed that prosecutrix, the daughter of Mahavir had accompanied him to Gwalior from Delhi as he had visited at the house of Mahavir to serve marriage card of his son. Further, he denied to having made any statement to the police. This witness was declared hostile by Ld. APP.

15.PW9 Dr. Poonam Yadav. This witness has medically examined the prosecutrix which was brought by one lady constable. This witness has deposed that prosecutrix had disclosed alleged history of elopement with a boy willingly with the intention to get married him on 14.05.2006 to Gwalior and both had stayed in a hotel and had sexual intercourse willingly. This witness proved the MLC of prosecutrix Ex.PW9/A.

16.PW10 HC Sohan Lal. This witness took the three sealed pullandas from the malkhana vide RC No.173/21 and deposit the same at FSL, Rohini and State Vs. Rahul Parashar and others after deposit of sealed pullandas at laboratory he handed over receipt of the same to the MHC(M).

17.PW11 Namrata is a stamp vendor. This witness has identified the stamp vendor register for the year 2006 produced by Madan Lal, Naib Tehsildar, East District, Delhi. She proved the non judicial

paper bearing No.889162 for Rs.10/- issued in the name of prosecutrix d/o Mahavir Prasad as Ex.PW12/B, non judicial paper of Rs.50/- bearing No.381393 issued in the name of Neetu d/o Mahavir Prasad as Ex.PW12/C, non judicial paper bearing No.889163 issued in the name of Rahul Parashar s/o S.K. Parashar as Ex.PW12/D. Photocopy of said register is Ex.PW11/A.

18.PW12 ASI Rajender Singh is a material witness being IO. He deposed that on 15.05.2006 Mahavir Singh lodged a missing report at Police Station Khajuri Khas regarding missing of prosecutrix. This witness further deposed that on 23.05.2006, he met Mahavir Singh, father of prosecutrix at his house and he told him that his daughter Neetu has been enticed by one Sonu @ Rahul with the help of Bal Kishan and he made a statement Ex.PW6/A to him. He further deposed that he made endorsement upon the same Ex.PW12/A and got the FIR registered in the Police Station. This witness further deposed that on 26.05.2006 Mahavir Singh met him again and informed that her daughter was taken away to Gwalior and from there she had left for Delhi. This witness further deposed that he along with State Vs. Rahul Parashar and others complainant, Mahavir Singh and one lady Ct. Sudha went to ISBT, Sarai Kale Khan and in the noon time, prosecutrix was recovered from the ISBT, Sarai Kale Khan at the instance of her father Mahavir Singh vide recovery memo Ex.PW6/B and her medical examination was conducted through W/Ct. Sudha.

19.This witness further deposed that he along with Ct. Kamal Kishore went in search of accused persons at West Karawal Nagar where he arrested the accused Rahul Parashar vide arrest memo already Ext. as PW7/A and his Personal Search was conducted vide personal search Memo Ex.PW7/B. This witness also seized the documents regarding marriage of accused with the prosecutrix i.e.Affidavit of prosecutrix, Marriage Deed and affidavit of accused Rahul Parashar vide Ex. PW12/B, PW12/C and PW12/D. This witness further deposed that thereafter, accused was taken to GTB Hospital for his medical examination, and after medical examination of prosecutrix as well as of accused he received sealed pullandas Ex. PW7/D and sealed pullandas were deposited in malkhana. This witness further deposed that on the next day, prosecutrix as well as accused Rshul Prashar were produced in the court Ld.MM from where accused was sent to JC and the custody of prosecutrix was handed over to his father. This witness thereafter, had moved an application to get recording statement of prosecutrix u/s 164 Cr.P.C. and same was got recorded by the court. This witness had also sent sealed pullandas to FSL.

State Vs. Rahul Parashar and others

20.This witness formally arrested accused Bal Kishan on 13.06.2006 vide arrest memo Ex.PW12/E and his personal search was conducted vide personal search memo Ex.PW12/F. This witness also seized the date of birth of certificate of prosecutrix mark 'X' from his father and as per the said certificate the date of birth was 2nd May 1990. This witness had also collected certificate of Vice Principal of the school where prosecutrix had studied and said certificate is mark X□ and said certificate also mentioned the same date of birth.

21.Further, this witness had visited Gwalior in the investigation of the present case and seized the photocopy of register of the Sharda Hotel Ext. PW2/A where accused Rahul Parashar and

prosecutrix had stayed. This witness after completion of investigation, handed over the case file to the SHO who prepared the challan and forwarded the same in the court. In his cross examination, this witness deposed that accused Rahul Parashar was produced on 22.05.2006 in the Police Station by his father prior to registration of the present case and told him that father of prosecutrix is making allegation against his son. This witness also admits that accused Bal Kishan had made an application before the court of Ld. MM, Dr. Shahbuddin alleging therein that police is harassing him and he had filed a report in this regard and certified copy of application and report are Ex.PW12/D□
1.

State Vs. Rahul Parashar and others

22.PW13 Dr. Vipin, Junior Resident, RML Hospital, New Delhi. This witness has medically examined the accused Rahul Parashar on 26.05.2006 and he proved the MLC Ex.PW13/A.

23.PW14 Madal Lal, Naib Tehsildar. This witness produced details of non judicial papers bearing No. 889162, 381393 and 889163. This witness also produced the stamp vendor register for the year 2006.

24.PW15 Sh. D.K. Tyagi, Advocate (Notary Public). This witness deposed that documents Ex.PW12/B, PW12/C and PW12/D were attested by him after some formal interrogation. He further deposed that serial number of aforesaid documents were given as 375/06, 374/06 and 376/06 which he has attested at point X on all the documents.

25.PW16 Abadh Kumar Katiyar, TGT Sanskrit, Govt. Girls Senior Secondary School, Karawal Nagar, Delhi. This witness proved the school leaving certificate of prosecutrix Ex.PW16/X issued from Navyug Happy Public School, Mukand Vihar, Karawal Nagar, Delhi. He also proved the copy of admission register Ex.PW16/A. This witness also proved certificate Ex.PW16/B regarding date of birth of prosecutrix which was issued by Smt. Harsh Pahwa, Vice Principal. In his cross examination, this witness admits that as per record there is no MCD record pertaining to the birth of prosecutrix.

State Vs. Rahul Parashar and others

26.PW17 Sh. R.K. Tripathi, Ld. ACMM. This witness recorded the statement of prosecutrix u/s 164 Cr.P.C. and proved the same Ex.PW17/A. This witness also appended the certificate regarding correctness of statement at point X. This witness given the copy of statement of prosecutrix to the IO on his request Ex.PW17/B.

27.PW18 V. Shankarnarainan, Sr. Scientific Assistant (Bio), FSL, Rohini, Delhi proved his biological report vide Ex.PW18/A and serological report vide Ex.PW18/B.

28.After prosecution evidence, statement of accused persons u/s 313 Cr.P.C. was recorded where both accused persons denied all these evidence and circumstances put to them. In statement u/s 313 Cr.P.C. accused Rahul Parashar deposed that prosecutrix was having love affair with him and she

herself took him to Jhansi, Gwalior, Jammu etc. and family members of prosecutrix were not happy with the act of prosecutrix and they got registered false case against him. Since no incriminating evidence could come on record against accused Bal Kishan. Accordingly, Ld. counsel for accused Bal Kishan has moved an application u/s 232 Cr.P.C. wherein Ld. Counsel seeking acquittal of accused Bal Kishan on the ground that there is no evidence against this accused and he should be released. Ld. Counsel argued that since no incriminating evidence has been placed on record State Vs. Rahul Parashar and others against accused Bal Kishan. By complying the provisions of Section 232 IPC, this court vide order dated 05.02.2011 acquit the accused Bal Kishan in absence of evidence by giving him benefit of doubt.

29. Thereafter, accused Rahul Parashar had led the evidence of defence witness in his defence. Dr. Gopesh, Radiologist, GTB Hospital, Delhi, was examined as DW1 as defence witness and he had deposed that on 26.05.2006 he had examined X-Ray plate of prosecutrix bearing number 3560 for age determination and give opinion that her age was 18-20 years on the day of examination.

30. After recording of defence evidence, case was fixed for final arguments. ARGUMENTS

31. Ld. APP for state, Sh. Zenual Abedeen argued that accused Rahul Parashar had enticed the prosecutrix with intention to commit rape upon her and in this regard a complaint was made by father of prosecutrix in the Police Station. Accordingly, case under section 363 IPC was registered against accused Rahul Parashar. Ld. APP further argued that on 05.02.2008 prosecutrix in her statement before the court had deposed that her age was 16 years on the date of commission of crime. Ld. APP further submits that as per school leave certificate date of birth of prosecutrix is 02.05.1990. Ld. APP for state submits that prosecutrix was taken by the accused Rahul State Vs. Rahul Parashar and others Parashar without the consent of the guardian of prosecutrix and according to medical report accused Rahul had committed rape upon the prosecutrix hence, he has committed the offence punishable 376 & 363 IPC. Ld. APP for state relies upon the statement of prosecutrix wherein the prosecutrix has stated that accused had committed rape upon her without her consent. Further, Ld. APP rely his case on the statement of PW Mahavir Singh, father of prosecutrix, who had made complaint to the police and shown his doubt upon the accused Rahul Parashar. Ld. APP submits that since the statement of prosecutrix and statement of father of prosecutrix support the case of prosecution, therefore, the present case is squarely covered under the ingredients of 376 IPC so the statement of prosecutrix is sufficient to convict the accused for offence charged as prosecution has proved its case beyond reasonable doubt.

32. On the other hand, Sh. P.L. Sharma, counsel for accused submits that accused has been implicated falsely in the present case. Ld. counsel for accused insisted upon the conduct of the prosecutrix with the accused Rahul parashar. Since it is admitted by the mother of prosecutrix that prosecutrix was in love with accused Rahul Parashar and from medical evidence it is also proved that prosecutrix had taken away accused Rahul Parashar and had sexual intercourse with her willingness. On question of age of prosecutrix Ld. Counsel pointed out that the very basis of documents ascertaining the date of birth from previous school of prosecutrix has not State Vs. Rahul Parashar and others been produced and merely document of Govt. Senior Secondary School, Karawal Nagar is not reliable being uncorroborated with any previous documents. Ld. Counsel

pointed out circumstances prior to incident and circumstances after the incident. Id. Counsel submits that in prior incident, prosecutrix was in love affairs with accused and this fact was very much in notice of her mother and due to this reason education of prosecutrix was stopped. On circumstance of after incident, Ld. Counsel for accused Rahul Parashar pointed out if prosecutrix was not consented then why she wait for accused Rahul Parashar at Gwalior Railway Station for one and half day, why she accompanied accused Rahul to Vaishno Devi Temple and why she stayed accused Rahul stayed in a hotel at Gwalior. Ld. Counsel further insist that it is very improbable that a girl who is of mature understanding capacity does not inform to anybody during her entire journey with accused Rahul Parashar. It is highly improbable that the prosecutrix live with accused Rahul without her consent. Ld. Counsel further pointed out the cross examination of PW3 wherein affidavit and marriage deed of accused and prosecutrix shows the age of prosecutrix to be 19 years. In these circumstances, Ld. counsel for accused Rahul Parashar prayed to acquit the accused.

33. During the course of argument ld. counsel for accused cited judgment of Hon'ble High Court of Delhi titled as 'Chidda Ram Vs. State, 1992 CRI.L.J. 4073' (relied) wherein it has held :

State Vs. Rahul Parashar and others "Penal Code (45 of 1860) Ss. 366 376, □ Rape on minor girl - Proof of age □ School Certificate not a conclusive evidence and ossification test, not a sure test - No birth certificate filed with the school - Age of prosecutrix revealed from her mother's version to be above 16 years and from the Doctor's opinion below 16 years - Neither direct proof of age produced nor reliable evidence adduced - Drawing of conclusion that age of prosecutrix was below 16 at the time of commission of offence - Not justified."

34. Again, ld. counsel for accused relied upon judgment in case titled as ' Rakesh and another Vs. State of Rajasthan, 1998 CRI. L.J. 1434' (relied) wherein Hon'ble Rajasthan High Court has held that :

"Entries in her school records showing her to be below age of eighteen years □ However, basis on which said entries were made, not proved □ School records cannot be relied upon - Evidence of doctor showing that secondary sex characteristics of girl were developed and she was between 15 to 16 years of age - However, he also opined that there can be margin of 2 to 3 years on either side - Consequently it cannot be said that prosecutrix was below age of 18 years - Offence under Sections 366 and 366 □ A not made out."

35. Again, ld. Counsel for accused relied upon judgment ' Mahavir Vs. State, Crimes VII □ 994 (2), 884' (relied) of Delhi High court, wherein :

"Sections 366 and 377 IPC □ prosecutrix quite friendly with appellant, went with appellant at several places and was consenting party to sexual intercourse □ Radiologist giving her age about 14 years and allow 16 years but it leave a margin of State Vs. Rahul Parashar and others 11/2 to 2 years to either side - Prosecutrix and her mother examined after 2 years of incident giving her age 18 years - Prosecutrix

crossed 16 years - Conviction is unsustainable."

36.Further, ld. Counsel for accused relied upon judgment 'Masauddin Ahmed Vs. State of Assam, 2009 (3) JCC 2002' (relied) wherein Hon'ble Supreme Court has held that :

"Penal Code, 1860□Sec. 376 - Rape - Consent of prosecutrix - Prosecutrix could not furnish any explanation as to why she did not raised the alarm or why she could not inform anybody in the hotel or while coming from the hotel on next or on the road about the incident□The prosecutrix appeared to be a woman of easy virtue□Thus it is a clear case of consent□Appellant acquitted of charges."

37.Again, Ld. Counsel for accused relied upon judgment 'Shyam and another Vs. State of Maharashtra, AIR 1995 Supreme Court 2169" (relied), wherein Supreme Court has held that :

"Penal Code (45 of 1860), S. 366 - Abduction - Prosecutrix not putting up struggle or raising alarm while being taken away by accused□Prosecutrix appearing to be willing party to go with accused on her own - Culpability of accused not established□Conviction set aside."

38.Further during the course of argument Ld. counsel placed copy of judgment of Hon'ble High Court of Delhi case titled as 'Deep Chand @ Dipu Vs. State, 2000 (1) JCC Delhi 49 (relied), wherein:

State Vs. Rahul Parashar and others "Penal Code 1860 - Sections 361 and 363□Kidnapping - Necessary basic ingredients of kidnapping - No enticing or taking away of the minor girls - Both the girls voluntarily gone to Railway Station and accompanied the accused for outing - Accused did not even go to take them from their residence for outing - If the minor herself leaves her father's house without any inducement by the accused who merely allows her to accompany him, it is no kidnapping."

39.Arguments heard. Record perused. On perusal of record it is revealed that present case was registered on the complaint of PW6 Mahavir Singh wherein doubt of abduction of prosecutrix was shown upon accused Rahul Parashar. PW3 prosecutrix gave two statements, u/s 161 Cr.P.C. dated 26.05.2006 Ex.PW17/A and other u/s 164 Cr.P.C. before Ld. MM dated 29.05.2006. In her statement dated 29.05.2006, she states that accused Rahul resides in her neighbourhood and used to run a watch shop in Chandni Chowk and he wanted to marry her. She further deposed that on 14.05.2006 accused Rahul Parashar met her but despite her refusal taken her in a auto by saying that they will return back shortly. She further deposed that from there he took her to New Delhi Railway Station and then to Jhansi, Gwalior and so on she travelled on different places. In her statement u/s 161 Cr.P.C dated 26.05.2006 she states that accused has committed rape upon her several times without her consent at Sharda Hotel, Gwalior. Medical evidence of prosecutrix also does not show any physical injury on her person neither on her private part even to the doctor prosecutrix did not disclosed that accused Rahul Parashar has committed State Vs. Rahul Parashar and others rape against her will. Further medical report shows that prosecutrix had eloped with a

boy willingly with intention to get marry to him on 14.5.2006 to Gwalior where she was living in a hotel and had a sexual intercourse with him willingly. Further, it is true that age of prosecutrix was stated to be 16 years on the date of commission of offence and in this regard PW16 had produced school record showing date of birth of prosecutrix as 02.05.1990 but any document constituting basis of this date of birth has not been placed by PW16. It is further revealed that date of birth of prosecutrix is not know to her mother PW4. Further PW5 father of prosecutrix was not able to disclosed age of prosecutrix. Hon'ble High Court of Delhi in case titled as 'Chidda Ram Vs. State, 1992 CRI.L.J. 4073' wherein :

"Penal Code (45 of 1860) Ss. 366 376, □ Rape on minor girl - Proof of age □ School Certificate not a conclusive evidence and ossification test, not a sure test - No birth certificate filed with the school - Age of prosecutrix revealed from her mother's version to be above 16 years and from the Doctor's opinion below 16 years - Neither direct proof of age produced nor reliable evidence adduced - Drawing of conclusion that age of prosecutrix was below 16 at the time of commission of offence - Not justified."

A school certificate or an admission form is not a conclusive evidence of age of the prosecutrix. The unproved and un□ exhibited school certificate cannot be teated as evidence in fact the ossification test is not a sure test as to the age of prosecutrix. It gives only an appropriate age which may vary by two years on either side. The medical opinion that prosecutrix was below 16 years. This fact only gives approximation of the age."

State Vs. Rahul Parashar and others

40. Further, it is also revealed that prosecutrix and accused Rahul parashar were in friendly terms and accused had visiting with the family of prosecutrix. This fact is also admitted by the mother of prosecutrix and this admission is supported that education of prosecutrix was stopped by her parents. Hon'ble High Court of Delhi in judgment ' Mahavir Vs. State, Crimes VII □ 994 (2), 884' of Delhi High court, wherein :

"Sections 366 and 377 IPC □ prosecutrix quite friendly with appellant, went with appellant at several places and was consenting party to sexual intercourse □ Radiologist giving her age about 14 years and allow 16 years but it leave a margin of 11/2 to 2 years to either side - Prosecutrix and her mother examined after 2 years of incident giving her age 18 years - Prosecutrix crossed 16 years - Conviction is unsustainable."

41. During perusal of record it is revealed that prosecutrix did not raise any alarm on any point of time during her entire journey with accused Rahul Parashar to Jammu Vaishno Devi, Sharda Hotel at Gwalior. Even she wait for accused Rahul Parashar at Gwalior Railway Station for one and half days and she stayed with accused Rahul in a room at Katra, at Yatra Parchi Counter at Katra where there were so many police personnel but this prosecutrix does not raise any alarm for her help. Hon'ble Supreme Court in judgment 'Masauddin Ahmed Vs. State of Assam, 2009 (3) JCC 2002'

wherein :

State Vs. Rahul Parashar and others "Penal Code, 1860□Sec. 376 - Rape - Consent of prosecutrix - Prosecutrix could not furnish any explanation as to why she did not raised the alarm or why she could not inform anybody in the hotel or while coming from the hotel on next or on the road about the incident□The prosecutrix appeared to be a woman of easy virtue□Thus it is a clear case of consent□Appellant acquitted of charges."

42.During the perusal of record it is revealed that complainant PW6 had lodged complaint of missing of prosecutrix with the police but it do not reveals that prosecutrix had put any struggle or raised any alarm while being taken by accused Rahul Parashar. Journey of prosecutrix with accused Rahul Parashar at various places by train and buses and on foot shows that prosecutrix was willing to travel with the accused Rahul Parashar and had given her consent. Hon'ble Supreme Court in judgment 'Shyam and another Vs. State of Maharashtra, AIR 1995 Supreme Court 2169', wherein :

"Penal Code (45 of 1860), S. 366 - Abduction - Prosecutrix not putting up struggle or raising alarm while being taken away by accused□Prosecutrix appearing to be willing party to go with accused on her own - Culpability of accused not established□Conviction set aside."

43.On perusal of record it is further revealed that medical examination of prosecutrix Ex.PW9/A which shows no external marks of injury upon prosecutrix. Hon'ble Allahabad High Court in case titled as 'Gokul Vs. State Vs. Rahul Parashar and others State of U.P., 2003 Cri. L.J. 1100' (relied) wherein it has been held that:

"prosecutrix though went to market in the company of other persons returned back with the accused alone. Plea of prosecutrix that accused dragged her, throw her on ground behind bushes and forcibly raped inspite of her resistance. No injury was found on the body of prosecutrix in the medical examination. Prosecutrix was to held to be consenting party."

44.Further on perusal of record it is revealed that affidavit of marriage of prosecutrix, it shows the age of prosecutrix to be 19 years and her independent decision of getting marriage with person of her choice and accompanying marriage deed Ex.PW12/C which shows that prosecutrix and accused had fallen in love with each other and were represented to be wife and husband and school certificate Ex.PW16/X of prosecutrix shows date of birth as 02.05.1990. Further, it is revealed that examination of Radiologist DW1 Dr. Gopesh from GTB Hospital who had admitted in his cross examination that bone age X□Ray determination by X□Ray is not exact test of age.

45.On perusal of record it is revealed that love letter Ex.D□ written by prosecutrix to accused Rahul Parashar shows that she was in love with accused Rahul Parashar.

46. On perusal of record it is revealed that FSL report Ex.PW18/A biological State Vs. Rahul Parashar and others report and PW18/B serological report which shows blood samples was putrefied hence no opinion and result regarding semen stains no reaction on Ex.1 and semen sample was putrefied, hence no opinion was opined.

47. For the purpose of offence of rape it would be relevant to discuss the definition of rape has been given under section 375 IPC. Section 375 IPC is being reproduced as under: "375. Rape - A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under sixteen years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Explanation. Sexual intercourse by a man with his own State Vs. Rahul Parashar and others wife, the wife not being under fifteen years of age, is not rape."

Section 376 IPC which is reproduced hereunder:

Section 376 IPC:

Punishment for rape - (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided 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 seven years. (2) Whoever, □

(a) being a police officer commits rape □

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution' or

(d) being on the management or on the staff of a hospital, takes State Vs. Rahul Parashar and others advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) Commits rape on a woman when she is under twelve years of age; or

(g) Commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 - Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub□section.

Explanation 2 □ "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3 □ "Hospital" means the precincts of the hospital and includes the precincts of any institution for a reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

48. After discussions the arguments, facts, circumstances and perusal of record, this court is of opinion that the statement of prosecutrix is highly improbable as same has not been corroborated by medical evidence. Even FSL report shows that blood was detected but blood sample was putrefied hence no opinion was given.

State Vs. Rahul Parashar and others

49. Further, age of prosecutrix is above 16 years and she stayed at different places with the accused and in her evidence before the court she had deposed that she had visited the places like railway station, Gwalior and Vaishno Devi temple which are public places where public at large number are always present and it cannot be said that prosecutrix was unconscious during her entire journey. Even during her stay at Hotel Sharda, Gwalior she did not disclose this fact that accused has forcibly taken her or committing rape upon her against her will.

50. To bring the case of prosecution under the definition of rape on the ground of injury, there must be some injury on the body of prosecutrix. If a lady is ravished by forcible intercourse then the injury (external) must appear on her person whereas in the present case no external injury was found on the body of prosecutrix. In my view these submissions and admissions raised doubt upon the story of the prosecution as no injury is found on the body of prosecutrix. Chemical analysis also recorded no semen or blood, as blood sample was putrefied.

51. In my opinion too it is not possible for single man to rape a woman without any resistance at all when subjected to forcibly intercourse, the victim is likely to offer some resistance to protect her body from injury in form of bruises, abrasions, etc. that would offer physical evidence regarding the incident which is missing in the present case.

State Vs. Rahul Parashar and others

52. Since the date of birth of 02.05.1990 of prosecutrix is suggested by document of school leaving certificate and in her marriage deed prosecutrix disclosed her age to be 19 years and radiologist has stated that bone age test is not exact test for determination of age. Since no specific document of date of birth of prosecutrix has been placed on record. Document Ex.PW16/X it reflects date of birth as 02.05.1990 and offence was committed on 14.05.2006 but no document as to ascertaining the date of birth is available on record and conduct of the prosecutrix shows that prosecutrix was well with mature understanding capacity and she took decision to stay with accused Rahul Parashar.

Hence, it cannot be presumed that age of prosecutrix was below 16 years.

53. Further in judgment of Hon'ble High Court of Delhi in case titled 'Kulwant Singh Vs. State of Govt. of NCT of Delhi' in criminal appeal No.715 of 2008 decided on 18.08.2010 wherein it has been held :

"In that case girl was mature enough and had taken a decision to run away with the boy of her own age as he was 18 years of age and prosecutrix was around 17 years of age. This court had not considered that appellant should have been convicted under section 376, 366 and 363 IPC."

State Vs. Rahul Parashar and others

54. In my view, it would be dangerous to pass a conviction merely on the statement of prosecutrix without corroboration. Having considered all facts and circumstances as mentioned above this court find that prosecution has failed to prove the charge beyond reasonable doubt against the accused Rahul Parashar. This court of the considered opinion that the prosecution has failed to prove the charge against accused Rahul Parashar beyond reasonable doubt. Accordingly, under the facts and circumstances of the case, this court hereby acquit the accused Rahul Parashar by giving him benefit of doubt from charges. In terms of directions of Hon'ble High Court of Delhi accused Rahul Parashar is directed to execute bail bond in sum of Rs.20,000/- with one surety in the like amount for the period of six months. File be consigned to record room.

ANNOUNCED IN THE OPEN COURT ON THIS 01.03.2011 (RAMESH KUMAR J) ADDL. SESSIONS JUDGE B1/NORTH EAST KARKARDOOMA COURTS: DELHI State Vs. Rahul Parashar and others