

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Order: 23rd September, 2010

CrI. Appeal No. 111 of 2004

% 23.09.2010 RAJESH @ MAGAN ...Appellant Through: Mr. Nagendra Kasana, Adv.

Versus

THE STATE ...Respondents Through: Mr. Sunil Sharma, Add. PP for the State.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest? ORAL

1. This appeal has been preferred against the judgment dated 30th January, 2004 whereby the appellant was convicted by the Trial Court under Section 363 IPC.

2. The appellant was booked for offences under Section 376/363 IPC on the basis of a complaint made by the father of the prosecutrix alleging that the appellant had enticed away his daughter aged around 14 years. During trial it transpired that the prosecutrix was in love with the appellant. The age of the prosecutrix was below 18 years but above 16 years. She had been exchanging love letters, greeting cards with the accused. Her ocular and medical evidence did not show that a rape committed on her. The learned Sessions Judge, therefore, came to conclusion that it was not a case of rape and the offence of rape was not made out. He, however, considered that since the age of the prosecutrix would be around 17 years i.e. below 18 years and she does not seem to be a willing party to accompany the accused to Haridwar and other places, an offence under Section 363 IPC was made out against the accused. Page 1 Of 2

3. A perusal of Section 363 IPC would show that an offence is made out under Section 363 IPC only if a girl below 18 years of age is enticed out of keeping of the lawful guardian or parents. In the present case evidence shows that girl had left the house of her parent of her own. She was already in love with the boy. She had been exchanging love letters and thereafter on finding a chance she had accompanied the boy and went to Haridwar, Rishikesh and other places. However, it is also proved that boy did not mis- use this opportunity and did not have sex with her and she came back after visiting these places.

4. The trial court did conclude that the prosecutrix was not under any physical or mental pressure at any point of time and she had been going to different places of her own. I therefore find that it was not a case of enticing of the prosecutrix but the prosecutrix of her own left house of her parents and accompanied the boy, so, no offence under Section 363 IPC was made out. The accused is acquitted of the offence under Section 363 IPC.

SEPTEMBER 23, 2010 SHIV NARAYAN DHINGRA J. acm

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