

Kamlesh Kumar Gop @ Deepak Vs. State

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Court : Delhi

Decided On : Jan-31-2014

Judge : Indermeet Kaur

Appellant : Kamlesh Kumar Gop @ Deepak

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:31.01.2014. CRL.A. 826/2013 KAMLESH KUMAR GOP @ DEEPAK Through Appellant Mr. K. Singhal and Mr.R.C. S. Bhadoria, Advs. versus STATE Through Respondent Ms. Kusum Dhalla, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 The appellant is aggrieved by the impugned judgment and order of sentence dated 30.11.2012 & 15.12.2012 respectively wherein he has been convicted for the offence under Sections 363/366/376/201/506 of the IPC as also under Section 313 read with Section 109 of the IPC. The appellant had tried along with another co-accused Rudal Mandal. The appellant before this Court is Kamlesh Kumar Gop. The sentence awarded to him was 8 years RI for the offence under Section 376 of the IPC along with a fine of Rs.5,000/- and in default of payment of fine to undergo SI for 5 months; 6 years RI for the offence under Section 366 of the IPC coupled with a fine of Rs.4,000/- and in default of payment of fine to undergo RI for 4 months; 5 years RI for the offence under Section 313

read with Section 109 of the IPC along with a fine of Rs.3,000/- and in default of payment of fine to undergo SI for 3 months; for the offence under Section 363 of the IPC, he had been sentenced to undergo RI for a period of 4 years with a fine of Rs.2,000/- and in default of payment of fine to undergo SI for 2 months; he had further been sentenced to undergo RI for 2 years for the offence under Section 201 of the IPC along with a fine of Rs.1,000/- and in default of payment of fine to undergo SI for 1 month. He had also been sentenced to undergo RI for 2 years for the offence under Section 506 of the IPC. All the sentences were to run concurrently. Benefit of Section 428 of the Cr.PC had been accorded to him. 2 At the outset, learned counsel for the appellants submits that he is not challenging the appeal on its merits; he only prays for leniency of sentence; submission being that out of period of 8 years which has been ordered against him, he has already been suffered imprisonment of 6 years and 7 months which is exclusive of his remission. This submission of the appellant is borne out from his nominal roll. The appellant prays that leniency be accorded in sentence and the sentence already undergone by him may be treated as the sentence imposed upon him. It has further been submitted that the appellant has been directed to pay fine of Rs.15,000/- for all the offences and in default of payment of fine, he has to undergo SI for 15 months. He is in financial stringency and being a labourer will not be in a position to pay the fine. Leniency in the fine is also prayed for. 3 Learned APP for the State submits that there is minimum punishment for the offence under Section 376 of the IPC for which the appellant has been convicted and unless there are special or adequate reasons, the minimum sentence should not be reduced. 4 Submissions and counter submissions of the respective parties have been noticed. 5 Section 376 of the IPC which is the most heinous offence for which the appellant has been convicted prescribes a minimum sentence of 7 years as also a fine. The other offences for which the appellant has been convicted are Section 366 of the IPC which prescribes a sentence which may extend to 7 years as also a fine. Under Section 313 read with Section 109 of the IPC, the sentence may be imprisonment for life or imprisonment for either of discretion which may extend to 10 years in addition to fine. Under Section 366 of the IPC, the punishment prescribed is imprisonment which may extend to 10 years and also a fine. Section 201 of the IPC prescribes a punishment, depending on the nature of

the offence, in addition to fine. Section 506 of the IPC prescribes a sentence of 2 years or fine. Except for Section 506 of the IPC all other offences for which the appellant has been convicted necessarily enjoin a fine also to be paid in addition to the period of incarceration that the convict has to suffer. As noted supra, no fine has been imposed upon the appellant for the offence under Section 506 of the IPC. 6 Keeping in view the oral submissions made by the learned counsel for the appellant; the fact that the offence relates to the year 2007 and the appellant has undergone almost 80% of his period of incarceration; he being young in years only 19 years of age on the date of the incident; he also being an illiterate and having come from a village from Chhatisgarh looking for a livelihood and the victim working as housemaid; in the fitness of things, it would be appropriate if the sentence of the appellant imposed under Section 376 of the IPC is reduced to the minimum 7 years RI. The fine of Rs.5,000/- is altered to fine of Rs.1,500/-. All other sentences of imprisonment shall remain unaltered. The fine of Rs.4,000/- imposed under Section 366 of the IPC is reduced to Rs.1,500/-; the fine of Rs.3,000/- imposed under Section 313 read with Section 109 of the IPC is reduced to Rs.1,000/-; the fine of Rs.2,000/- imposed under Section 363 of the IPC is reduced to Rs.500/-; the fine of Rs.1,000/- imposed under Section 201 of the IPC is also reduced to Rs.500/-. 7 With these modifications, the appeal is disposed of.

INDERMEET KAUR, J JANUARY31 2014 A

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