

Rajesh Kumar Vs. State

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Court : Delhi

Decided On : Mar-21-2013

Judge : S. P. Garg

Appellant : Rajesh Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

21. t March, 2013 + CRL.A. 970/2005 RAJESH KUMAR Through :Appellant Ms.Rakhi Dubey, Advocate. versus STATE Through : .Respondent Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

(Open Court) 1. The appellant- Rajesh Kumar challenges judgment dated 06.07.2005 in Sessions Case No.11/2003 arising out of FIR No. 734/1998 PS Dabri, by which, he was held guilty for committing offences under Sections 363/366/342/354/34 IPC. Vide order dated 12.07.2005, he was sentenced to undergo RI for five years with total fine ` 5,000/-.

2. Allegations against the appellant were that he, Billa and Pramod kidnapped prosecutrix X (assumed name), aged 10 years and committed rape upon her. Charges under Sections 342/363/366/34 IPC and under Section 376 (g) were framed to which he pleaded not guilty and claimed Trial. The prosecution examined six witnesses to substantiate the charges. In his 313 Cr.P.C. statement,

the appellant pleaded false implication. Earlier he and Billa were proclaimed offenders. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty for the offences described previously and sentenced him. Being aggrieved, the appellant has come in appeal.

3. During the course of arguments, learned counsel for the appellant MsRakhi Dubey, Advocate, on getting instructions from the appellant present in person stated that the appellant has opted not to challenge his conviction under Sections 363/366/342/354 IPC. He however, prays to take lenient view and to release him for the period already undergone in this case.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has not opted to challenge the findings of the Trial Court on conviction under Sections 363/366/342/354 IPC, order of conviction of the Trial Court stands affirmed.

5. Regarding order on sentence, it reveals that the appellant was sentenced to undergo RI for five years with total fine ` 5,000/- under various offences. Nominal roll dated 18.03.2006 reveals that the appellant remained in custody for three years, eight months and four days as on 09.03.2006. He also earned remission for two months and twenty one days. He was not involved in any other criminal case. Fine was deposited in the Court. The substantive sentence of the appellant was suspended on 30.03.2006 and he was admitted to bail. There are not allegations that during the pendency of the present appeal, the appellant indulged in any other criminal activity. It is stated the he is an unmarried person. He was of young age at the time of incident. Considering all these mitigating circumstances, in my considered view, no useful purpose will be served to send the appellant to serve the remaining unexpired portion of the substantive sentenced awarded to him. In the interest of justice and considering the peculiar facts of the case, order on sentence is modified and the appellant is sentenced for the period already undergone by him in this case. He need not be surrender in the Court or before the Jail Superintendent. Appeal filed by the appellant stands disposed of in the above terms. Copy of the order be sent to Jail Superintendent for information.

6. Trial Court record (if any) be sent back forthwith. (S.P.GARG) JUDGE MARCH
21 2013/tr

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