

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal 714/2007 & Crl.M.B.1470/2008**

Date of Decision: 14.09.2009.

ANIL KUMAR

..... Appellant

Through: Mr. K.B. Andley, Sr. Adv. with Mr.
M.L. Yadav, Mr. M. Shamikh, advs.

Versus

STATE OF DELHI.

..... Respondent

Through: Mr. Navin Sharma, APP.

S.C. No.139/2006

FIR No.463/2006

U/S 363/376/506 IPC

P.S. KIRTI NAGAR

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

: **MOOL CHAND GARG,J**(*Oral*)

1. Learned counsel appearing for the appellant does not press the appeal on merits but submits that in the peculiar facts and circumstances of the case where it is apparently a case of consent as the prosecutrix had not even raised the alarm and remained without protest in the house of the appellant for the whole night and her hymen was also found intact, the sentence awarded to the appellant be reduced to the period already undergone inasmuch as the appellant has already undergone two years five months

besides earning remission of five months and 23 days as on 26.02.2009.

2. I have heard the submissions, the learned APP admits that in this matter except for a photocopy of the birth certificate, which has not even been properly exhibited and the statement made by the prosecutrix under Section 161 Cr.P.C., there is no other evidence available on record to prove that the prosecutrix was of less than 16 years of age. Even during trial when the prosecutrix appeared before the trial Court her age was not recorded.

3. Taking into consideration the aforesaid facts, and no alarm having been raised by the prosecutrix and the evidence which has been recorded by the prosecution which establish that the prosecutrix remained with the appellant of her own for the whole night without raising any alarm and also in view of the fact that her hymen was found intact, I am satisfied that the interest of justice would be met if, while maintaining the conviction of the appellant, the sentence awarded to him is reduced to the period already undergone.

4. The appellant may be, accordingly, released from jail forthwith in case is he not wanted in any other case.

5. The appeal and the application is disposed of.

6. A copy of the order be sent to the jail superintendent.

MOOL CHAND GARG, J.

SEPTEMBER 14, 2009/anb