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

DECIDED ON : 1st August, 2013

+ **CRL.A. 389/2013**

SHEELA

..... Appellant

Through : Mr.Inderjeet Sidha, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. The appellant challenges the correctness and legality of the judgment dated 13.10.2011 in Sessions Case No.17/2011 arising out of FIR No.71/2011 registered at police station Bhalaswa Dairy by which she was convicted for committing offence under Section 363 IPC. By an order dated 18.10.2011, she was sentenced to undergo RI for three years with fine ₹500/-.

2. Allegations against the appellant were that on 23/24.04.2011 in between 9.45 PM and 10:00 P.M. at the back of House No.A-2/167, JJ Colony, Bhalaswa Dairy she kidnapped a child Ankush, aged one year, in order that he may be murdered or may be so disposed off to give 'Bali' and drowned the child in the water in an attempt to kill him for that purpose. DD No.59B was assigned to SI Rajender who with Constable Satish reached at A-2, JJ Colony, Bhalsawa Dairy on 23.04.2011. He found a crowd present in front of House No.164/A-2, JJ Colony, Bhalsawa, Delhi. Kamlesh and Daya Ram had caught hold Sheela and a child was recovered from her. SI Rajender recorded Kamlesh's statement and lodged First Information Report. She disclosed that Sheela, who used to do *tantra-mantra*, came to her house and took her son Ankur when she had gone to toilet. She went in the street in search of her child and saw Sheela running towards her house. She found Daya Ram with her son whose clothes were wet. He informed her that her son was lying in the water and was taken out by him. Sheela was arrested. The Investigating Officer recorded the statement of witnesses conversant with the facts. After completion of investigation, a charge-sheet was submitted against her for committing offence under Section 364/307 IPC. She was duly charged and brought to

trial. The prosecution examined nine witnesses to prove the appellant's guilt. In her 313 statement, she pleaded false implication. On appreciating the evidence and after considering the rival submissions of the parties, the Trial Court by the impugned judgment convicted her under Section 363 IPC. It is relevant to note that the State did not challenge her acquittal under Section 307/364 IPC.

3. During the course of hearing, appellant's counsel on instructions stated at Bar that the appellant has opted not to challenge her conviction under Section 363 IPC. She, however, prayed to take lenient view as she has undergone the substantial substantive sentence awarded to her. Learned Additional Public Prosecutor for the State has no objection to this.

4. Since the appellant has opted not to challenge the findings of the Trial Court on conviction under Section 363 IPC and has accepted it voluntarily, her conviction under Section 363 is confirmed. It transpires that she was sentenced to undergo RI for three years with fine ₹500/-. Nominal roll dated 04.03.2013 reveals that she has already undergone one year, ten months and eight days incarceration. She has also earned remission for five months and fourteen days as on 01.03.2013. The

unexpired portion is now less than four months. She is not a previous convict and is not involved in any other criminal case. Her overall jail conduct is satisfactory. She is in custody from the very inception. She has earned acquittal under Section 364/307 IPC. She is illiterate and is a labour. She has two children to take care of. Taking into consideration all these mitigating circumstances, the order on sentence is modified and she is ordered to be released for the period already undergone by her in this case which is more than two and a half years.

5. The appeal stands disposed of in the above terms.
6. Copy of the order be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

AUGUST 01, 2013

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