

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

**DECIDED ON : FEBRUARY 23, 2015**

**+ CRL.A.119/2004**

**SAGAR NARAIN JHA**

..... Appellant

Through : Mr.Gunjan Kumar, Advocate.

versus

**THE STATE (GOVT.OF NCT OF DELHI)**

..... Respondent

Through : Ms.Kusum Dhalla, APP.

**CORAM:  
HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (ORAL)**

1. The appellant-Sagar Narain Jha impugns a judgment dated 01.10.2003 in Sessions Case No.207/98 arising out of FIR No.387/98 under Section 376/506/34 IPC registered at Police Station Mangol Puri by which he and his associate Pappu Kumar Singh were convicted under Section 376 IPC. By an order dated 29.10.2003, the appellant was sentenced to undergo RI for eight years with fine ₹5,000/-

2. Briefly stated the prosecution case as set up in the charge-sheet was that on the night intervening 30/04/1998 and 1/5/1998 behind Sulab Shauchalaya in front of C-Block, Mangol Puri, the appellant and his

associate in furtherance of common intention sexually assaulted prosecutrix 'X' (assumed name) and criminally intimidated her. The prosecutrix was produced by Vijay Pal, her uncle at the police station and was medically examined. After recording her statement (Ex.PW-5/A), the Investigating Officer ASI Rajbir Singh (PW-12) lodged First Information Report. The appellant was arrested and medically examined. The prosecutrix recorded her statement under Section 164 Cr.P.C. After completion of investigation, a charge-sheet was submitted in the court against the appellant and his associate-Pappu Kumar Singh. The prosecution examined 15 witnesses to establish their guilt. In their 313 statements, the accused persons denied their complicity in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. It appears that the co-convict has not challenged the conviction and has served out the sentence awarded to him. It is relevant to note that the appellant was tried for committing offence under Section 506 IPC also but was acquitted. The State did not challenge his acquittal under Section 506 IPC.

3. During the course of arguments, the appellant present in the court instructed his counsel not to challenge the findings of the Trial Court recorded on conviction. He, however, prayed to modify the sentence

order as he has remained in custody for substantial period and has lost his wife recently.

4. Since the appellant has opted not to challenge the findings on conviction and the prosecutrix in her statement has categorically identified him to be the perpetrator of the crime, the conviction recorded by the Trial Court under Section 376 IPC cannot be faulted and is affirmed.

5. The appellant was sentenced to undergo RI for eight years with fine ₹5,000/-. Though the appellant's crime to have sexually assaulted a minor aged about 13 years deserves no leniency, however, considering the mitigating circumstances, the substantive sentence awarded to the appellant needs slight variation. The appellant has faced ordeal of trial/appeal for about 16 years as the incident pertains to the year 1998. Nominal roll dated 25.02.2012 reveals that he remained in custody for six years, two months and twenty days as on 20.07.2004 besides remission for two months and twenty five days. The unexpired portion is only one year, six months and fifteen days. The appellant is not a previous convict and is a first time offender. He is not involved in any other criminal case. His overall jail conduct was satisfactory and he did not avail any interim bail/parole throughout. The appellant is a married person and has recently lost his wife. He is to take care of his son who is

studying in XI<sup>th</sup> standard. After his release on bail on 20.07.2004, his involvement in any other criminal case has not surfaced. Considering these circumstances, the sentence order is modified to the extent that the substantive sentence awarded to the appellant shall be RI for seven years instead of RI for eight years. Other terms and conditions of the sentence order are left undisturbed.

6. The appeal stands disposed of in the above terms. The appellant shall surrender before the Trial Court on 19<sup>th</sup> March, 2015 to serve out the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith along with the copy of this order. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

**(S.P.GARG)**  
**JUDGE**

**FEBRUARY 23, 2015**

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