

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

DECIDED ON : FEBRUARY 20, 2015

+ CRL.A.227/2004

DILSHAD AHMED

..... Appellant

Through : Mr.M.Shamikh, Advocate.

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J. (ORAL)

1. The instant appeal is directed against the judgment dated 30.01.2004 of learned Additional Sessions Judge in Sessions Case No.341/97 arising out of FIR No.648/96 under Section 366A/376 IPC registered at Police Station Janak Puri by which the appellant-Dilshad Ahmed was held guilty for committing offence under Section 354 IPC. By an order dated 17.02.2004, he was sentenced to undergo RI for one year with fine ₹5,000/-.

2. Allegations against the appellant as set up in the charge-sheet were that on 26.07.1996 at about 04:00 p.m. outside jhuggis in a vacant

place in Pappan Kalan, he committed rape upon 'X' (assumed name), aged about 9 years. Statements of witnesses conversant with facts were recorded during investigation. The prosecutrix was medically examined; she recorded 164 Cr.P.C. statement. After completion of investigation, a charge-sheet was filed under Section 366A/376 IPC. The appellant was, however, charged only under Section 376 read with Section 511 IPC to which he pleaded not guilty and claimed trial. The prosecution examined nine witnesses to establish the appellant's guilt. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. It is relevant to note that the State did not challenge the acquittal under Section 376 read with Section 511 IPC.

3. During the course of arguments, appellant's counsel on instructions stated that the appellant has opted to give up challenge to the findings on conviction recorded by the Trial Court. He, however, prayed to take lenient view as the appellant has remained in custody for about six months and is not a previous convict. To this, learned Additional Public Prosecutor has no objection.

4. Since the appellant has accepted the findings of the Trial Court on conviction voluntarily and there is ample evidence in the form of

statement of the prosecutrix, conviction under Section 354 IPC is affirmed.

5. The appellant was tried for the offence punishable under Section 376 read with Section 511 IPC. However, he was found guilty for committing offence under Section 354 IPC. He remained in custody for about six months in the incident of the year 1996 and has suffered the agony of trial/appeal for about 18 years. The fine is stated to have been deposited. Sentence order records that the appellant was not involved in any other criminal case; is not a previous convict; was aged about 21 years at the time of occurrence. At present, he has five children and the youngest one is five years old. His wife has expired and there is none else to take care of the children. When asked to pay some compensation to victim, he volunteered to pay a reasonable amount. Considering these circumstances, no useful purpose will be served to send the appellant in custody particularly when his involvement in any other case after suspension of sentence in 2004 has surfaced.

6. In the light of the above discussion, the period already undergone by the appellant in this case is taken as his substantive sentence under Section 354 IPC. Other terms and conditions of the sentence order are left undisturbed. The appellant shall, however, pay ₹20,000/- as

compensation to the victim and shall deposit it in the Trial Court within two weeks to be given to the victim after due notice.

7. The appeal stands disposed of in the above terms. Trial Court record (if any) along with copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

FEBRUARY 20, 2015

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