

\$~R-42

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

+ CRL.A.960/2004

DECIDED ON : FEBRUARY 09, 2015

SANTOSH KUMAR

..... Appellant

Through : None.

versus

THE STATE OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP for State.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present appeal has been preferred by the appellant-Santosh Kumar to challenge the legality and correctness of a judgment dated 07.07.2004 of learned Additional Sessions Judge in Sessions Case No.35/2002 arising out of FIR No.397/2001 under Sections 363/366/368/376 IPC registered at Police Station Mandawali, Delhi by which he was held guilty for committing offence under Sections 363/366 and 376 IPC. By an order dated 08.07.2004, he was awarded rigorous imprisonment for 7 years with fine of ₹3,000/- under Section 376 IPC and RI for five years with fine ₹2000/-

under Section 366 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant as reflected in the Charge-sheet were that on 6.12.2001, at about 12 noon he and his associate Dinesh Kumar abducted 'X' (assumed name) to Ghaziabad in a Gatta factory where the appellant committed rape on her. On 8.2.2001 the appellant sent 'X' with Dinesh on the pretext that he would come within fifteen days after arranging money. Dinesh, thereafter, took the prosecutrix to Kanchanpur village and then on 19.12.2001 at about 08:00 a.m. Manju, Dinesh and Santosh were recovered by the police and brought to Delhi. On report, lodged by 'X's mother, accused persons were arrested. On the statement of the victim FIR under Section 376 Cr.P.C. was registered at Police Station Mandawali. Her statement under Section 164 Cr.P.C. was recorded. 'X' was less than 16 years of age at the time of commission of the offence. The statements of the witnesses well conversant with the facts were recorded. After completion of investigation, a Charge-sheet under Sections 363/366/368/376 IPC was submitted against the appellant and Dinesh Kumar. The prosecution examined 10 witnesses to establish the appellant's guilt. In the statement recorded under Section 313 Cr.P.C, the appellant denied his involvement in the offence. The trial resulted in his conviction

under Sections 363/366 and 376 IPC. Co-accused Dinesh was acquitted of all the charges. Being aggrieved and dissatisfied, the appeal has been preferred by the appellant.

3. The appeal was admitted on 18.03.2005. By an order dated 08.05.2006 the remaining sentence of the appellant was suspended and he was released on bail on his executing a personal bond in the sum of ₹20,000/- with one surety in the like amount. On application being moved by the appellant, the surety amount was reduced from ₹20,000/- to ₹10,000/- by an order dated 12.09.2006. The appellant could not avail the benefit of bail and remained in custody. The appeal was listed for hearing on 21.01.2015. When the file was taken up for hearing, none appeared on behalf of the appellant.ailable warrants for the appearance of the appellant were issued and fresh Nominal Roll of the appellant was also called.

4. Nominal Roll dated 29.01.2015 reveals that the appellant has already been released on 20.11.2007 after he served out the substantive sentence awarded to him. The fine has been paid by him in Jail.

5. Since the appellant has already completed the substantive sentence awarded to him and has deposited the fine imposed, the appeal preferred by

the appellant has become infructuous. None has appeared on behalf of the appellant to address the arguments on merits. Even after being released on 20.11.2007, the appellant did not appear before the court to get the appeal decided on merits. It seems that the appellant is not interested to pursue the appeal. The appeal is dismissed as infructuous. It is, however, made clear that if the appellant appears before the Court within a reasonable time to get the appeal decided on merits, his prayer would be considered favourably. Pending application (if any) also stands disposed of.

6. Trial court record (if any) be sent back with the copy of this order.
7. Intimation be sent to the Jail Superintendent.

(S.P.GARG)
JUDGE

FEBRUARY 09, 2015

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