

\$-R-39

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

DECIDED ON : 8th OCTOBER, 2015

+ **CRL.A. 120/2012**

RAJESH KUMAR @ GAPODI Appellant

Through : Ms.Neha Singh, Advocate.
Appellant is present in JC.

versus

STATE Respondent

Through : Mr.Sanjeev Sabharwa, APP.

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

S.P.Garg, J. (Oral)

1. Present appeal is directed against a judgment dated 12.08.2011 of learned Additional Sessions Judge in Sessions Case No. 42/10 arising out of FIR No.157/10 PS Mahendra Park by which the appellant – Rajesh Kumar @ Gapodi was held guilty for committing offences under Sections 363/376 IPC. By an order dated 19.08.2011, he was sentenced to undergo RI for seven years with fine ₹10,000/- under Section 376 IPC and RI for three years with fine ₹5,000/- under Section 363 IPC. Both the substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case was that on 26.06.2010 at about 08.00 p.m. the prosecutrix 'X' (assumed name) aged around fifteen years went near Shiv Mandir to take chowmin from a rehri but did not return. Complaint was lodged by her father Chandan Singh informing the police that the appellant, a rickshaw-puller, had taken away his daughter. The investigation was carried out after registering FIR. 'X' was recovered and medically examined. The accused was arrested and taken for medical examination. Upon completion of investigation, a charge-sheet was filed against him in the Court. The prosecution examined fourteen witnesses in all to establish appellant's guilt. In 313 Cr.P.C. statement, the appellant pleaded false implication and claimed innocence. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. During the course of arguments, the appellant who appeared in custody pursuant to the issuance of production warrants opted to give up challenge to the findings on conviction. He, however, prayed to modify the sentence order as he has already undergone substantial portion of the substantive sentence.

4. Since the appellant has given up challenge to the findings of Trial Court, his conviction is affirmed. Minimum sentence prescribed

under Section 376 IPC cannot be modified or reduced. Nominal roll dated 01.10.2015 reveals that the appellant has already undergone five years, three months and three days incarceration besides remission for one year, one month and ten days as on 30.09.2015. Nominal roll further reveals that he has clean antecedents and is not involved in any other criminal case. His overall jail conduct is satisfactory. Considering the facts and circumstances of the case, Sentence Order is modified to the extent that default sentence for non-payment of fine ₹15,000/- under both the heads would be only one month. Other terms and conditions of the Sentence Order are left undisturbed.

5. The appeal stands disposed of in the above terms.

6. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

OCTOBER 08, 2015 / tr