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

DECIDED ON : 14th MAY, 2015

+ **CRL.A.No.922/2011 & CRL.M.A.No.196/2015**

RAVI NAGAR @ RAVINDER Appellant

Through : Mr.Ankur Sood, Advocate with
Mr.Shoumendu Mukherji,
Advocate.

versus

STATE Respondent

Through : Ms.Kusum Dhalla, APP.
SI Vivek Sharma, PS Gokalpuri.

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

S.P.Garg, J. (Oral)

1. The appellant – Ravi Nagar @ Ravinder impugns a judgment dated 09.06.2011 of learned Addl. Sessions Judge in Sessions Case No.58/10 arising out of FIR No.47/2010 under Sections 363/366/376 IPC registered at Police Station Gokalpuri by which he was held guilty for committing offences under Sections 363/366/376 IPC. By an order dated 04.07.2011, he was awarded various prison terms with fine.

2. Allegations against the appellant as reflected in the charge-sheet were that on 11.02.2010 at about 07.15 p.m. near Bus Stand, B-Block, Delhi, he kidnapped 'X' (assumed name) aged 17 years from lawful guardianship of her uncle Shakir Ali and thereafter committed rape upon her in between 11.02.2010 and 24.02.2010 at different places. FIR was registered under Section 363 IPC on getting missing person report. During investigation, the appellant was apprehended and arrested. 'X' was recovered; she recorded her 164 Cr.P.C. statement. She was medically examined. Statements of witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined 16 witnesses to prove its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The appellant examined two witnesses DW-1 (Satish) and DW-2 (Veer Singh) in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. During the course of arguments, Crl.M.A.No.196/2015 under Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 was filed by the appellant claiming juvenility on the day of incident.

In response to notice, State filed status report. By an order dated 12.02.2015, the parties were directed to appear before the Trial Court on 24.02.2015. The Trial Court was directed to record findings regarding the juvenility of the appellant on the day of occurrence and submit its report. Report dated 20.04.2015 has been received from the Trial Court. As per enquiry conducted by the Court of Sh.Rakesh Siddhartha, District & Sessions Judge (NE), Karkardooma Courts, Delhi, age of the appellant has been ascertained as 17 years, 10 months and 17 days on the day of occurrence. The enquiry report has not been challenged by the State. Apparently, on the day of incident, the appellant was below 18 years of age and was juvenile.

4. Considering the observations of the Hon'ble Supreme Court in '*Mohan Mali & Anr. vs. State of Madhya Pradesh*', (2010) 6 SCC 669, in para 12,13 and 14 and having regard to the fact that the appellant – Ravi Nagar @ Ravinder was minor on the date of commission of offence and has already undergone more than the maximum sentence provided under Section 15 of the Juvenile Justice (Care & Protection of Children) Act, 2000, by applying the provisions of Rule 98 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 read with Section 15 and 64 of the Juvenile Justice (Care & Protection of Children) Act, 2000, appeal

filed by the appellant is allowed. Pending application also stands disposed of. The appellant be released forthwith if not required to be detained in any other criminal case.

5. Trial Court record along with a 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

MAY 14, 2015 / tr