

\$-6

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

DECIDED ON : 6th JANUARY, 2015

+ **CRL.A. 812/2012 & CRL.M.A.No.16549/2014**

TALIB @ DEV

..... Appellant

Through : Mr.Deepak Vohra, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Navin K.Jha, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. The appellant – Talib @ Dev impugns a judgment dated 02.02.2011 of learned Additional Sessions Judge in Sessions Case No. 35/10 arising out of FIR No.216/08 under Sections 363/366/376 IPC PS Sarai Rohilla by which he was held guilty for committing offences punishable under Sections 366/376 IPC. By an order dated 05.02.2011, he was sentenced to undergo RI for four years with fine ₹ 7,000/- under

Section 366 IPC and RI for seven years with fine ₹ 10,000/- under Section 376 IPC. Both the sentences were to run concurrently.

2. Allegations against the appellant as reflected in the charge-sheet were that on 25.08.2008 after 03.00 P.M. at A Block, Shastri Nagar market, Sarai Rohilla, he kidnapped prosecutrix 'X' and thereafter, took her to his native village. The appellant committed rape upon the prosecutrix there. On 06.09.2008, the appellant was arrested. Statements of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. Statements of the relevant witnesses were recorded. After completion of investigation, a charge-sheet was filed before the Court against the appellant. The appellant pleaded not guilty to the charges and claimed false implication. The prosecution examined thirteen witnesses to bring home the appellant's guilt. In 313 statement, the appellant denied his involvement in the crime. He did not prefer to adduce any evidence in defence. On scrutinizing the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant for the offences mentioned previously. Being aggrieved and dissatisfied, he has preferred the instant appeal.

3. During the course of arguments, learned counsel for the appellant, on instructions, stated at Bar that the appellant has opted not to

challenge the findings of the Trial Court on conviction. He, however, prayed to take lenient view as the appellant has served out the substantive sentence awarded to him. Learned Addl. Public Prosecutor for the State has no objection to it.

4. Since the appellant has opted not to challenge findings of the Trial Court on conviction, in the presence of overwhelming evidence of the prosecutrix and other witnesses examined by the prosecution, conviction of the appellant under Sections 366/376 IPC stands affirmed.

5. Regarding sentence, admitted position is that the appellant had already served the substantive sentence awarded to him. At present, he is undergoing default sentence for non-payment of fine imposed under both the heads. Nominal roll dated 30.12.2014 reveals that the appellant is not involved in any criminal case and is not a previous convict. His overall conduct in jail is satisfactory. His age has been shown as 26 years.

6. Considering the facts and circumstances of the case, default sentence for non-payment of fine is modified. Accordingly, for non-payment of fine, ₹ 7,000/- under Section 366 IPC and ₹ 10,000/- under Section 376 IPC, the default sentence in all would be one month. Sentence order stands modified to that extent.

7. Appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

JANUARY 06, 2015 / *tr*