

\$-R-31

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

DECIDED ON : 1st OCTOBER, 2015

+ **CRL.A.759/2009 & CRL.M.B.1192/2009**

SHATRUGHAN MORYA

..... Appellant

Through : Ms.Chaitali Jain, Advocate with
Mr.Neeraj Jha, Advocate.

versus

STATE & ORS.

..... Respondents

Through : Mr.Sanjeev Sabharwal, APP.

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

S.P.Garg, J. (Oral)

1. The instant appeal has been preferred by the appellant – Shatrughan Morya to impugn a judgment dated 27.04.2009 of learned District Judge-IV, New Delhi, in Sessions Case No.74/06 arising out of FIR No. 454/06 PS Defence Colony by which he was convicted under Sections 376/377 IPC. By an order dated 28.04.2009, he was awarded RI for ten years with fine ₹5,000/- under Section 376 (2) IPC and RI for eight years with fine ₹4,000/- under Section 377 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant as reflected in the charge-sheet were that on the evening of 06.06.2006, he committed rape upon the prosecutrix 'X' (assumed name), aged around six years, his daughter. On 21.09.2006, charge under Section 376 IPC for having carnal intercourse upon 'X' was also framed. The prosecution examined thirteen witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant pleaded false implication. The trial resulted in his conviction as aforesaid.

3. The appellant preferred the instant appeal before this Court on 09.10.2009. Vide order dated 28.02.2012 CrI.M.A.No.2590/2012 for hearing the appeal on urgent basis was accepted. However, by an order dated 25.07.2013, the matter was ordered to be listed in the category of 'Regular Matters' as per its year of filing. When the matter was taken up for hearing on 22.09.2015, none appeared on behalf of the appellant to address arguments. Notice was ordered to be issued to Ms.Subhadra, Advocate, who represented the appellant on the previous date of hearing. Fresh nominal roll of the appellant was called along with issuance of production warrants for his appearance.

4. Report bearing No.F.4/SCJ-4/AS(CT)/2015/1704 dated 28.09.2015 has been received from the Superintendent of Prison, Central Jail No.4, Tihar, New Delhi, to the effect that the appellant has already

been released on 10.09.2014 after completion of sentence. The fine has already been deposited by him in jail.

5. Since the appellant has served out the sentence awarded to him and has deposited the fine, it appears that for that reason, he was not contacted the counsel or the Court to get the appeal decided on merits. The appeal has thus become infructuous and is disposed of as such. It is, however, made clear that if the appellant appears within a reasonable time for disposal of appeal on merits, his request will be considered.

6. Superintendent Jail is directed to furnish comprehensive list of all such convicts who happen to be in custody in appeals related to the sexual offences of the years 2007, 2014 and 2015. It shall indicate the period already undergone by them in the respective cases pertaining to this Bench.

7. 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 necessary information and compliance.

(S.P.GARG)
JUDGE

OCTOBER 01, 2015 / tr