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

DECIDED ON : 18th MAY, 2015

+ **CRL.A.No.1157/2012 & CRL.M.A.No.17512/2012**

RAJ KUMAR

..... Appellant

Through : Mr.Jatin Rajput, Advocate with
Mr. Anupam Dubey, Advocate.

versus

THE STATE (G.N.C.T OF DELHI)

..... Respondent

Through : Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. The appellant – Raj Kumar impugns a judgment dated 03.01.2012 of learned Addl. Sessions Judge in Sessions Case No.102/2010 arising out of FIR No.181/2010 under Section 363 IPC (subsequently Sections 342/366/376 IPC added) registered at Police Station Samay Pur Badli by which he was held guilty for committing offences under Sections 342/366/376(1) IPC. By an order dated 07.01.2012, he was awarded various prison terms with fine.

2. Allegations against the appellant as reflected in the charge-sheet were that on 02.07.2010 at about 10.00 p.m. near Shochalaya near jhuggi No.778, J.J.Camp, Badli, Delhi, he kidnapped 'X' (assumed name) aged 12 years from lawful guardianship of her parents and confined her in a room at Malka Ganja Road near Ghanta Ghar Kamla Nagar, Delhi and thereafter, committed rape upon her. 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 11 witnesses to prove its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The appellant examined DW-1 (Sat Narayan) 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, CrI.M.A.No.17512/2012 under Section 482 Cr.P.C. seeking directions for conducting ossification test of the appellant under the provisions of Juvenile Justice Act, 2008

read with 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. Order dated 12.12.2014 of learned Metropolitan Magistrate under Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 has been received from the Trial Court regarding appellant's age. As per bone enquiry conducted by Metropolitan Magistrate-02 (North), Rohini Courts, Delhi, age of the appellant has been ascertained as 15 years and 7 months 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. As per nominal roll, the appellant is in custody for the last more than five years.

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 – Raj Kumar 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 18, 2015 / tr