

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

Date of Order: June 12, 2017

+ **CRL.A. 403/2014**

HANS KUMAR Appellant
Through: Mr. Aditya Vikram, Delhi High
Court Legal Services Committee's
Panel Advocate

versus

STATE Respondent
Through: Mr. Mukesh Kumar, Additional
Public Prosecutor for State with
ASI Rajender Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

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Impugned judgment of 26th October, 2013 holds appellant guilty for committing offences under Sections 328/363/366/376/506(II) of IPC and vide order of 28th October, 2013, appellant has been sentenced to rigorous imprisonment for seven years with fine of ₹4,000/- on each count under Sections 328/363/366 of IPC, with default clause. However, for the offence under Section 506(II) of IPC, he has been sentenced to rigorous imprisonment for three years with fine of ₹3,000/- with default clause. For the main offence under Section 376 of IPC, appellant has been sentenced by trial court to rigorous imprisonment for ten years with fine

of ₹10,000/- with default clause. Trial court has directed that the above sentences shall run concurrently.

The facts noted in detail in the opening paragraph of impugned judgment need no reproduction. Suffice to note that as per prosecution case, the age of prosecutrix (PW-2) was fifteen years and on the strength of her evidence and that of her father (PW-2), her brother (PW-5), medical evidence and other evidence on record, appellant stands convicted and sentenced as noted hereinabove, while discarding appellant's plea of false implication.

At the outset, learned counsel for appellant submits that appellant on the day of incident i.e. 18th February, 2009, was in his early twenties and was unmarried and that he now has family to support and he is not involved in any other case. It is further submitted that appellant is a poor person and he has already remained behind bars for more than eight years and his conduct in jail has been satisfactory and the minimum sentence provided for the offence of rape as on the day of the incident, was seven years, which has been already undergone by him and so, the sentence awarded to appellant deserves to be reduced to the period already undergone by him.

On the contrary, learned Additional Public Prosecutor for State supports the impugned judgment and order on sentence and submits that though the minimum sentence provided for the offence under Section 376 of IPC on the day of incident was seven years, but the sentence awarded to appellant is just and proper. Learned Additional Public Prosecutor for State has placed on record appellant's latest Nominal Roll of 9th June,

2017 and submits that as per appellant's latest Nominal Roll, appellant has already undergone sentence of eight years, five months and eleven days and today, in pursuance of production warrants issued against him, he has been produced in custody in the Court.

Upon hearing and on perusal of impugned judgment, order on sentence, appellant's Nominal Roll of 9th June, 2016 and the evidence on record, I find that conviction of appellant is well deserved, but the order on sentence needs to be varied in view of the fact that appellant is not involved in any other case and because his conduct in jail has been satisfactory and that the minimum sentence provided for the offence of rape as on the day of the incident was seven years, which has been already undergone by him.

In the facts and circumstances of this case, the substantive sentence awarded to appellant is reduced from ten years to eight years for the offence 376 of IPC and the period of default of fine is reduced to simple imprisonment for one month each for the offences under Section 328 of IPC, Section 363 of IPC, Section 366 of IPC and Section 506(II) of IPC. For the offence under Section 376 of IPC, the period of sentence in default of payment of fine is also reduced to simple imprisonment for two months in view of poor financial condition of appellant.

In light of the aforesaid, the sentence awarded to appellant is modified as indicated above. Appellant is in custody. He be released forthwith, if he has undergone the above modified sentence and if he is not wanted in any other case. The concerned Jail Superintendent be apprised of this order forthwith to ensure its compliance.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JUNE 12, 2017

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