

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

Date of Decision: June 15, 2017

+ **CRL.A. 590/2014**

SANDEEP @ AMIT Appellant
Through: Mr. Amar Nath, Amicus Curiae

versus

STATE Respondent
Through: Mr. Mukesh Kumar, Additional
Public Prosecutor with SI Ramesh
Kumar

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned judgment of 20th February, 2014 holds appellant-accused guilty for the offences under Sections 363/365/376/506 of IPC and vide impugned order of 21st February, 2014, appellant has been sentenced as under: -

(i) For the offence u/s 363 IPC, appellant Sandeep @ Amit is sentenced to Rigorous Imprisonment for a period of three years along with a fine of ₹2,000/- (Rs. Two thousand only), in default of payment of fine, to undergo S.I. for three months.

(ii) For the offence u/s 365 IPC, appellant Sandeep @ Amit is sentenced to Rigorous Imprisonment for a period of five years along with a fine of ₹2,000/- (Rs. Two thousand only), in default of payment of fine, to undergo S.I. for three months.

(iii) For the offence u/s 376 IPC, appellant Sandeep @ Amit is sentenced to Rigorous Imprisonment for a period of ten years along with a fine of ₹5,000/- (Rs. Five thousand only), in default of payment of fine, to undergo S.I. for six months.

(iv) For the offence u/s 506 IPC, appellant Sandeep @ Amit is sentenced to Rigorous Imprisonment for a period of two years along with a fine of ₹2,000/- (Rs. Two thousand only), in default of payment of fine, to undergo S.I. for three months.

Trial court has directed the above sentences shall run concurrently.

The facts noted in impugned judgment are as under: -

“Briefly stated case of the prosecution is that on 20.02.2012 at about 7:30 PM, accused Sandeep @ Amit, who was friend of one of the brothers of the prosecutrix, kidnapped prosecutrix N, aged about 13 years, from her house bearing No.C-4/8, LSC Market, Sultanpuri, Delhi, on pretext that Komal, friend of prosecutrix, was calling her and took her to a room at ground floor in a three storied building, situated behind the Government School of C-6 Block, Sultanpuri, Delhi, where he forcibly confined her and raped her against her wishes and consent. He further criminally intimidated her and threatened to kill her in case she raised alarm. As per the case of the prosecution, the victim alerted her brother Rajan, who was searching for her frantically by giving repeated calls on mobile phone of accused, from the mobile phone of accused himself. The brothers of prosecutrix reached the place, where accused had confined her, and rescued her from clutches of the accused. They also apprehended the accused at that place itself and called the police. The case was registered on

complaint made by victim N. The accused was arrested by the police. During the course of investigation, accused as well as prosecutrix were got medically examined and samples collected from them, by respective doctors, were sent to FSL. After completing investigation charge sheet was prepared by the IO and filed in the Court through SHO concerned. ”

Trial court has relied upon evidence of prosecutrix (PW-6), her grandmother (PW-3), medical evidence and other evidence on record to convict and sentence appellant-accused as noted hereinabove. While holding appellant-accused guilty, trial court has brushed aside the specific stand taken by appellant, which is as under: -

“Q37. Do you want to say anything else?

Ans. I am innocent. I have been falsely implicated in this case. Whenever, I used to visit the house of prosecutrix being a friend of her brother, prosecutrix used to take Rs.10/20 from me for bringing chocolates and I used to treat her as younger sister of my friend. On the day of Shivratri, prosecutrix herself came to my house and at that time, I was under the influence of Bhang and was not in my senses. She took away Rs.1500/-, which I had got my wages and his brother had reached at that place while searching for her. When his brothers saw her coming out of my house, she concocted a false story and falsely implicated me in the present case. No such calls were made at my mobile phone at that time.”

In pursuance of production warrants issued against appellant vide last order, appellant has been produced in custody before the Court and on his instructions, learned Amicus Curiae submits that afore-referred

stand taken by appellant before trial court is the true version and that on the day of this incident, appellant was aged 23 years and was working with father of the prosecutrix and that appellant is a poor person and has family responsibilities to shoulder and his family consists of his old and ailing father and one younger brother to support and so, lenient view on the quantum of sentence be taken.

On the other hand, learned Additional Public Prosecutor supports the impugned judgment and order on sentence, to submit that since prosecutrix was aged more than 12 years at the time of incident, so minimum sentence, which appellant is liable to undergo, is of seven years. He further submits that as per appellant's latest Nominal Roll, he has undergone sentence of 6½ years approximately, but sentence less than the minimum ought not to be awarded.

Upon hearing and on perusal of impugned judgment, order on sentence and the evidence on record, I find that conviction of appellant is well merited, but while taking note of appellant's stand before the trial court and the fact that appellant is a poor person and has family responsibilities to shoulder, it is deemed appropriate to marginally reduce the sentence awarded to appellant by few months as the facts and circumstances of this case provide special and adequate reasons to do so. Such a course is being adopted because there is no other case pending against appellant and his conduct in jail has been satisfactory.

In the peculiar facts and circumstances of this case, the substantive sentence awarded to appellant is reduced to the period already undergone by him i.e. more than 6½ years, which is marginally less than the minimum sentence of 7 years.

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

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JUNE 15, 2017

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