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

DECIDED ON : 6th FEBRUARY, 2017

+ **CRL.A.1099/2014 & CRL.M.A.No.17825/2016**

RAVI @ SONU Appellant

Through : Mr.Puneet Singhal, Advocate.

VERSUS

THE STATE (NCT OF DELHI) Respondent

Through : Mr.Arun K.Sharma, APP.

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

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the appellant – Ravi @ Sonu to challenge the legality and correctness of a judgment dated 28.01.2014 of learned Addl. Sessions Judge in Sessions Case No.83/2012 arising out of FIR No.316/2012 registered under Sections 363/367/377 IPC at Police Station Sunlight Colony by which the appellant was held guilty for committing offences punishable under Sections 367/377 IPC. By an order dated 07.02.2014, he was sentenced to undergo RI for five years with fine ₹21,000/- under Section 377 IPC and RI for two years with fine ₹4,000/- under Section 367 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant, in brief, were that on the night intervening 11/12.08.2012 near flyover of Sarai Kale Khan, he

committed carnal intercourse against the order of nature with 'X' (assumed name) aged around 10 years. DD No.39 (Ex.PW12/A) dated 12.08.2012 came into existence at Police Station Sunlight Colony. 'X' was medically examined. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. The appellant was arrested. Upon completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined twelve witnesses to prove its case. In 313 Cr.P.C. statement the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as aforesaid.

3. During the course of arguments, learned counsel for the appellant, on instruction, stated that the appellant has opted not to challenge the findings of the trial court on conviction. He prayed to modify the sentence order as the appellant has undergone substantial period of substantive sentence and is not a previous convict. Learned APP has no objection to take into consideration the mitigating circumstances.

4. Since the appellant has opted not to challenge the findings of the Trial Court on conviction and there is overwhelming evidence whereby the victim had identified the appellant to be the perpetrator of the crime, conviction under Sections 367/377 IPC is affirmed.

5. The appellant was sentenced to undergo RI for five years with fine ₹21,000/- under Section 377 IPC. Nominal roll dated 24.01.2017 reveals that he has undergone four years, four months and twelve days incarceration besides remission for four months and twenty-nine days as on 23.01.2017. Apparently, the substantive sentence awarded by the Trial Court is almost complete. The appellant is not involved in any other criminal case.

6. Considering the facts and circumstances of the case and the substantial sentence already undergone by him, the Sentence Order is modified to the extent that the period already undergone by him in this case shall be taken as substantive sentence. The appellant shall of course pay fine as imposed by the Trial Court and default sentence would be SI for one month for non-payment of ₹21,000/- under Section 377 IPC and ten days for non-payment of ₹4,000/- under Section 367 IPC. Other terms and conditions of the Sentence Order are left undisturbed.

7. The appeal stands disposed of in the above terms. Pending application also stands disposed of.

8. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 06, 2017 / tr