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

+ **CRL.A. 913/2005**

SUNIL

..... Appellant

Through: Mr. Sumeet Verma & Ms. Preeti
Jakhar, Advocates.

Versus

STATE

..... Respondent

Through: Ms. Asha Tiwari, APP for State with
SI Amit Dutt, PS Lajpat Nagar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

06.06.2018

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The Trial Court Record has been received.

The Nominal Roll has not yet been received.

Learned counsel for the appellant submits that he is the legal aid counsel and he has no contact with the appellant. The Investigation Officer shall make an endeavour for the presence of the appellant through the SHO concerned for the date 13.06.2018 for which date, notice be also issued to the surety who would stand as a surety for the production of the appellant for the date 10.01.2018.

The Nominal Roll be also called for the said date.

ANU MALHOTRA, J

JUNE 06, 2018

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CRL.A. 913/2005

At this stage, the learned counsel for the appellant is present and the learned APP for the State is also present and the matter has been taken up in view of the receipt of the nominal roll from the Superintendent Central Jail-02, Tihar, New Delhi dated 06.06.2018 indicating that the appellant has already been released on bail on 24.02.2009 after expiry of the sentence in the case, i.e., FIR No.495/03, PS Lajpat Nagar, New Delhi in relation to which vide impugned judgment dated 22.03.2005, the appellant was convicted for the offences punishable under Section 366 & 376 of the Indian Penal Code, 1860 and vide the impugned order on sentence dated 29.03.2005, he was sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs. 1,000/- qua the offence punishable under Section 376 of the Indian Penal Code, 1860 and in default of the payment of the fine to further undergo Simple Imprisonment for one month and was also sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 500/- qua the offence punishable under Section 366 of the Indian Penal Code, 1860 and in default of the payment of the fine to further undergo Simple Imprisonment for 15 days with the sentences having been directed to run concurrently with the benefit of Section 428 of the Cr.P.C. having been granted to the convict with it having been indicated vide order dated 29.03.2005, i.e., the impugned order on sentence itself that the appellant was in custody.

The nominal roll further indicates that the said total fine of Rs. 1,500/- imposed vide order dated 29.03.2005 has since been deposited on 22.09.2006.

Submissions have been made on behalf of either side qua the instant appeal.

On behalf of the appellant, the learned counsel present submits that the testimony of the prosecutrix and also the testimony of PW-6, Dr. Vimla, Research Officer, AIIMS, New Delhi through her cross-examination who has categorically testified to the effect that there was no external injury on any part of the body of the prosecutrix when she was produced before her for medical examination and the testimony of the prosecutrix and other witnesses examined on behalf of the State are wholly infirm and inconsistent with each other in relation to material particulars and do not assist the State to bring forth the conviction of the appellant qua the offences punishable under Sections 366 & 376 of the Indian Penal Code, 1860.

On behalf of the appellant, it has further been contended that the prosecutrix was aged about 14 years at the time of the alleged occurrence and mature enough to understand the implications of having accompanied the appellant of her own and that the allegations of kidnapping also for the commission of an offence on her for compelling her to illicit intercourse are not brought forth in any manner.

On behalf of the State, the said submission is vehemently refuted submitting to the effect that there is no infirmity whatsoever in the impugned judgment and the impugned order on sentence and submitting *inter alia* to the effect that there is no requirement for any external injuries to exist on the person of the prosecutrix.

Taking into account the factum that the testimony of the prosecutrix was categorical in relation to her kidnapping to subject her to illicit

intercourse and also of the commission of rape on her and the circumstances of the prosecutrix having been so kidnapped and having been raped being corroborated through the testimony of her father who had taken her to the hospital on having returned from his place of work at 4/5 PM when he was informed by his wife of the commission or rape by the appellant on his daughter and also by the testimony of PW-3 SI Yudhvair Singh who had handed over the sealed intact parcel as handed over by the doctor at the AIIMS Hospital to him which he thereafter handed over to ASI Kala Joshi, the Investigating Officer of the instant case, which testimony of PW-10 Dr. ASI Kala Joshi, PS Lajpat Nagar also corroborates the factum of the underwear of the prosecutrix having been handed over to her by the prosecutrix which had been sealed and sent to the FSL for examination and the FSL report dated 21.10.2003 exhibited as Ex.PX categorically indicates the presence of human semen on Q2, i.e., the underwear of the prosecutrix qua which it has been submitted on behalf of the State brings forth the allegations against the appellant beyond a reasonable doubt.

It has also been submitted on behalf of the State that the prosecutrix having been a minor below the age of 16 years even if it be attempted to be contended as sought to be contended on behalf of the appellant that the prosecutrix accompanied the appellant of her own, the same would not suffice to negate the charges and proof of charges against the appellant of the commission of abduction and rape on the prosecutrix.

As regards the contention raised on behalf of the appellant that there was no semen detected on the vaginal swabs, i.e., Q1a and Q1b, and nor was their any reaction on A2 the underwear of the appellant, as contended on

behalf of the State and as rightly observed by the learned Trial Court, the sample of the under garment of the appellant was apparently putrefied and thus the lack of any reaction on his under wear does not in any manner assist the appellant in any manner. As regards the contention raised also on behalf of the appellant that there were inimical terms between the appellant and the family of the prosecutrix, there is nothing on the record to substantiate the same and a perusal of the impugned judgment brings forth that there is no infirmity in the same.

In view thereof, the impugned judgment dated 22.03.2005 convicting the appellant qua the proved commission of the offences punishable under Sections 366 & 376 of the Indian Penal Code, 1860 is upheld and so is the impugned order on sentence dated 29.03.2005 whereby the appellant was sentenced to undergo Rigorous Imprisonment for seven years qua the offence punishable under Section 376 of the Indian Penal Code, 1860, to pay a fine of Rs. 1,000/- and in default of payment of the fine to further undergo Simple Imprisonment for one month and was also sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 500/- qua the offence punishable under Section 366 of the Indian Penal Code, 1860 and in default of payment of fine to further undergo Simple Imprisonment for 15 days which fine as reported vide the nominal roll received today has been deposited on 22.09.2006 and the appellant after earning remissions has also already been released from jail on 24.02.2009 after expiry of the period of sentence.

In view thereof, the impugned judgment and the impugned order on

sentence being upheld, the appellant having been undergo sentence imposed and deposited the fine, the CRL.A. 913/2005 does not survive anymore, which is thus disposed of as being declined.

The date 13.06.2018 is cancelled.

ANU MALHOTRA, J

JUNE 06, 2018
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