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

% *Judgment reserved on: 05.3.2018*

Judgment delivered on: 12.3.2018

+ CRL.A. 1054/2013

RAJ KISHOR

..... Appellant

Through Ms.Sunita Arora, Advocate

versus

STATE (GOVT OF DELHI)

..... Respondent

Through Mr.Amit Ahlawat, APP with SI
Ramesh Kumar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 06.5.2013 and 10.5.2013 respectively wherein the appellant stood convicted under Section 376 of the IPC. He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo RI for a period of 2 years.

2 Learned counsel for the appellant at the outset under instructions from her client (present in Court) submits that she is not pressing his conviction but having regard to the fact that the appellant has undergone incarceration

of almost 7 years; the sentence of RI 10 years be reduced to the period already undergone. Attention has been drawn to the order dated 04.5.2017 wherein this fact stood mentioned. Attention has also been drawn to the earlier order sheets which disclose that the application of the appellant seeking suspension of his substantive sentence had been allowed in his favour on 13.8.2015. The appellant could not arrange for a surety; he had filed repeated applications seeking reduction of his surety amount. The surety amount was reduced from Rs.50,000/- to Rs.15,000/-. He could avail of bail order only on 12.5.2017 when he was released from the jail. The report of the Jail Superintendant to the said effect is on record.

3 The nominal roll of the appellant reflects that as on 12.5.2017 (date of his release) he had undergone incarceration of about 6 years and 7 months which included the remissions earned by him. His jail conduct was satisfactory.

4 Learned counsel for the appellant has drawn attention of this Court to Section 376 of the IPC. It is pointed out that the prosecutrix in this case was an adult; she was admittedly 20 years of age; she was known to the appellant; the offence had occurred in broad day light. The clothes of the victim were not torn. The FSL report had not supported the version of the

prosecution. No semen stains were found upon her under-garments or her private parts; no injury was noted upon her person. Attention has been drawn to that part of the testimony of PW-1 where in her examination-in-chief she did not speak of any physical relation of herself with the appellant; this information was elicited only in the cross-examination by the learned APP for the State. It is additionally pointed out that the appellant had suffered incarceration (as noted supra) of 6 years and 7 months.

5 This Court notes that while hearing arguments on sentence, the Trial Judge had noted that the appellant is a married man and had a 13 year old son at that time; he would be still in his teens; he has his mother to look after and his father had since expired; his wife was a household lady; the appellant was the only bread earner in the family. This was his first offence. He otherwise had clean antecedents; his conduct during trial was cooperative. These were the factors which have been brought to the notice of the Trial Judge. Today before this Court the counsel for the appellant is seeking a reduction in the sentence and the same position is reiterated. Learned counsel for the appellant has additionally relied upon the legislative provision of Section 376 of the IPC; emphasis has been laid on the proviso. Submission is that in appropriate cases for just and adequate reasons the

minimum sentence of 7 years RI may be reduced.

6 Per contra learned counsel for the State submits that the minimum sentence of 7 years cannot be altered. The Trial Judge had rightly awarded the sentence of 10 years. It is further submitted that this crime is a crime against the society and not an individual crime. The conviction has not been opposed on merits; on sentence the impugned order suffers from no infirmity; no interference is called for.

7 Arguments have been heard.

8 Record shows that PW-1 was the star witness of the prosecution; she was a lady aged 20 years was known to the appellant; they were living in the same neighbourhood. As rightly pointed out by the learned counsel for the appellant in her examination-in-chief she had not spoken a word about any physical relation of herself with the appellant. This was elicited in her cross-examination. No injury was found upon her person. The FSL had not supported the version of the prosecution. Semen was not detected upon her under-garments or on her private parts.

9 PW-2 was the mother of the prosecutrix. She has also admitted that the parties were known to one another. The appellant had in fact promised to marry her daughter and on that pretext only the victim and the appellant used

to go out together. However, he being a married man was not disclosed to the victim and this was why he had intentionally wriggled out of his promise to marry her daughter. She denied the suggestion that the appellant has been falsely implicated.

10 These were the star witnesses of the prosecution. This Court notes that the merits of the conviction are not in dispute. Conviction of the appellant under Section 376 is accordingly sustained.

11 On the point of sentence this Court notes that rape is undoubtedly an offence against the society; it is not an individual crime. The object of sentencing is to protect the society and deter individuals from committing such offences; the sentence which is imposed must commensurate with the nature of the offence and the manner in which the offence has been committed; while taking into account the aggravating and mitigating factors and circumstances of the crime, the sentence should be appropriate and in proportion to the crime committed. Criminal law adheres in general to the principle of proportionality allowing some significant discretion to the courts in arriving at a sentence depending upon the special facts of each case.

12 The proviso to Section 376 enables the Courts to impose a sentence of imprisonment less than the prescribed minimum for “adequate and special

reasons”. What is an adequate and a special reason would depend upon a variety of factors and the peculiar facts and circumstances of each case. There exists no strait-jacket formula for universal application. In Ram Kumar Vs.State of Haryana reported as (2006) 4 SCC 347 wherein sufficient evidence was tendered by the prosecution to prove the guilt of the accused, the Apex Court, however, while considering the peculiar facts and circumstances of the case that the victim had got married and was living with her husband, had modified the sentence and reduced it to 3 years. In Ravindra Vs. State of Madhya Pradesh report as (2015) 4 SCC 491 the Apex Court found it a fit case for invoking the proviso to Section 376; the incident being 20 years old, also the fact that the parties had since been married (not to each other) and that a compromise having been entered into were considered as “adequate and special reasons” under the proviso. In State Vs. Mange Ram AIR 2000 SC 2798 where the prosecutrix and the accused were related and both were teenagers and evidence indicating no marks of violence at all on any part of the body of the prosecutrix and also considering that the incident had happened in 1993, the Apex Court had held that the sentence of less than 7 years already undergone by the accused would be sufficient to meet the ends of justice.

13 In the light of the aforementioned discussion and the facts and circumstances of the instant case (as noted supra) this is a fit case for invoking the proviso to Section 376 of the IPC. The offence having taken place in the year 2011, the prosecutrix being 20 years of age at the time of the commission of the offence; no injuries having been found upon her person, the appellant being known to her and being a married man having a 13 year old son at that time, this being his first offence and he being the only bread earner in his family, would qualify as adequate and special reasons to enable the appellant to avail of the benefit of this proviso.

14 The nominal roll of the appellant (supra) reflects that as on the date when he had been granted bail he had undergone incarceration of 6 years and 7 months. Accordingly, this Court is of the view that the sentence already suffered by the appellant be the sentence imposed upon him. The fine of Rs.10,000/- remains unaltered. He is directed to pay the fine amount within three weeks; in default of payment of fine he shall undergo SI for a period of one month.

15 Appeal disposed of in the above terms.

INDERMEET KAUR, J

MARCH 12, 2018

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