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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 4th April, 2019

+ CRL.A. 647/2005

BABU KHAN

..... Appellant

Through: Mr. Gautam Khazanchi,
Advocate with appellant in
person.

versus

STATE

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP.
SI Nikhil Singh, P.S. New
Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant Babu Khan was prosecuted in the Sessions Case No.133/2002 in the Court of Additional Sessions Judge on the basis of report (chargesheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on the charge for offences punishable under Section 365 and 376 read with Section 34 of Indian Penal Code, 1860 (IPC), the said trial also being against a co-accused (Raja @ Shahid). On the basis of evidence which was adduced, the trial court, by its judgment, dated 20.01.2004, held both appellant and the said Raja guilty and convicted them, as charged. By order dated 21.01.2004, rigorous imprisonment for seven years with fine of Rs.3,000/- each was awarded against the appellant, and the co-convict, for the offences under Section 376 IPC, this in addition to rigorous imprisonment of

five years as fine of Rs.2,000/- for offence under Section 365 IPC. Both substantive sentences were directed to run concurrently and the benefit of set off was accorded under Section 428 Cr.P.C., for the period of detention already undergone.

2. The present appeal was filed in 2005 assailing the said judgment and order on sentence. The substantive sentence was suspended and the appellant released on bail pending hearing on the appeal by order dated 14.09.2005. The appeal was admitted and directed to be taken up in due course. It came up for hearing for the first time thereafter from the regular board on 21.08.2017. It has come up for final hearing 18 years after the events which had given rise to the case.

3. The appellant has moved an application (Crl. M.A. No.755/2019) submitting that he does not wish to challenge the impugned judgment on merits, he expressing remorse and accepting his guilt. He is seeking reduction in sentences, *inter alia*, on the grounds that he comes from an underprivileged strata of society and is earning his livelihood to support his family which include two children, he not having been involved in any crimes other than the present case. That the appellant had clean antecedents prior to the registration of the aforementioned case and thereafter till date is confirmed by the report of the station house officer (SHO), New Ashok Nagar presented by the Additional Public Prosecutor, who leaves the consideration of the request for reduction of the punishment to the judicial discretion of the Court.

4. Though the appellant has admitted his guilt by the aforementioned application, this being the final Court on facts, the evidence adduced by the prosecution to substantiate the charge has been gone through. It may be mentioned here that the case concerns the abduction and rape of the prosecutrix (PW-2) on 23.02.2001 statedly by co-convict Raja from the area of the police station where the FIR was registered at her instance, after she had been recovered and brought back to Delhi, she having been found lodged in jail in a case involving offence under Section 294 IPC registered by the local police in the area of Deoband (Uttar Pradesh) sometime on 26.03.2001. As per the prosecution case, the co-convict Raja had allured the prosecutrix to accompany him, he having taken her to a village in the area of Saharanpur, Uttar Pradesh where she was illegally detained and subjected to rape by several persons, one after the other. The other persons who were also accused of similar crime included juveniles described as 'A' and 'S' who, it is pointed out, were brought before Juvenile Justice Board (JJB) which forum found them guilty and dealt with them in accordance with law governing the juveniles and conflicts with law.

5. Role was also attributed to four other persons including Tahira and Khalid, the former (Tahira) being wife of the appellant herein. It appears that when the appellant was brought to trial in the aforementioned sessions case, Tahira was absconding. She was eventually arrested and tried on similar charges of abetment separately (in sessions case No.249/2016), the trial having ended in judgment of

acquittal rendered on 22.11.2018 by another sessions court, as the role attributed to Tahira could not be proved and the prosecution having failed to that extent. Similarly, Khalid, who was also proclaimed offender when the trial from which the present appeal arises was pending, was also brought to justice he having been separately tried but acquitted by judgment dated 18.10.2016.

6. The prosecution case against the appellant rested primarily on the word of the prosecutrix (PW-2) she having narrated the sequence of events wherein prime role is attributed to co-convict Raja, complicity being attributed to the appellant *vis-à-vis* the place of wrongful confinement. The version of the prosecutrix at the trial was consistent and there is no reason why she or her credibility be doubted. The co-convict Raja died on 08.12.2006 while undergoing the sentences awarded against him in the present case. A report dated 23.10.2018 to this effect has been submitted by Deputy Superintendent, Central Jail No.2.

7. The acts of commission which have been the subject matter of the charge against the appellant were committed in February, 2001. Eighteen years have passed by. The report submitted by the State confirms that the appellant has had a clean record other than his involvement in this case. As per the nominal roll, he had suffered incarceration for the period of 4 years 11 months 24 days (including remission) by the time, he was released on bail pending hearing on the appeal.

8. Having regard to the above mentioned facts and the provision relating to the punishment prescribed in law for the offences at the time of commission of offences (prior to the amendment of the 2013), in the considered view of this Court, it is a fit case where the rigour of the punishment be reduced to the period of detention already undergone. Ordered accordingly.

9. With the above directions, the appeal stands disposed of.

R.K.GAUBA, J.

APRIL 04, 2019
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