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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 193/2020**

HARPREET SINGH

.....Appellant

Through: Mr. Nishank Mattoo, Advocate
versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Savita Solanki PS Khyala,
Delhi (M:9205368056).
Mr. Archit Upadhyay, Advocate
(DHCLSC) for victim.
Mr. Tushar Sannu, SC for IHBAS
with Mr. Fazallu Rehman and Mr.
Saurabh Pandey, Advocates
(M:9911991166)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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14.11.2025

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 16.12.2019 and order on sentence dated 23.12.2019 passed by the learned ASJ-09 (POCSO), West, Tis Hazari Courts, Delhi in Sessions Case No. 56703/2016 arising out of FIR No. 254/2012 registered under Sections 376/377/366A/511 IPC at P.S. Khyala. Vide the impugned order on sentence, the appellant was sentenced as under:-

- “(i) to undergo simple imprisonment for a period of 3 years alongwith fine of Rs.10,000/- for the commission of offence punishable under Section 363/366 IPC;
- (ii) to undergo rigorous imprisonment for a period of 7 years alongwith fine of Rs.25,000/- for the commission of offence punishable under Section 376/511 IPC;

In default of payment of above fine, the convict shall undergo simple imprisonment for a further period of six months. It is directed that both the sentences shall run concurrently. The



convict shall be entitled to the benefit of Section 428 Cr.P.C.”

The appellant's sentence was suspended during pendency of the present appeal vide order dated 01.05.2025

2. Briefly put, the case of the prosecution is that on 17.10.2012, the appellant kidnapped the minor victim, who was on her way to her grandmother's shop, took her to the room situated above his residence and attempted to commit forcible rape and carnal intercourse upon her. Upon the child victim refusing his sexual advances, he left the victim on the road, from where she reached her grandmother's shop in a distressed condition. The victim's maternal grandmother contemporaneously made a complaint, on the basis of which the present FIR was registered. The victim's statement under Section 164 Cr.P.C. was subsequently recorded, the appellant was arrested, and the medical examination of both the victim and the appellant was conducted. Charges against the appellant were framed under Sections 363, 366, 376/511, and 377/511 IPC, to which he pleaded not guilty and claimed trial.

3. The Trial Court found the testimony of the victim, examined as PW-2, to be clear, cogent, and consistent on all material particulars. In her statement under Section 164 Cr.P.C., as well as in Court, she categorically stated that the appellant took her to the first-floor room above his house, removed her clothes, exposed himself, touched her private parts, and attempted to commit sexual intercourse with her. No material contradiction or improvement was elicited during her cross-examination. Her version was duly supported by the testimony of PW-3, her maternal grandmother/complainant, who deposed that the victim came to her in a distressed condition and narrated the incident immediately thereafter. The prosecution also examined PW-5, an independent shopkeeper, who stated



that he had seen the appellant come to the gate of his house and take the victim away quickly. There is no dispute regarding the age of the victim or the identity of the appellant. The Trial Court considered and rejected the defence version projected through DW-1, the appellant's father, finding it to be a bald allegation of prior enmity unsupported by any credible material. Based on the material produced, and keeping in mind the child victim's consistent testimony, corroborated by PW-3 as well as PW-5, this Court concurs with the findings of the Trial Court and finds that no grounds to interfere with the impugned judgment are made out. Consequently, the conviction of the appellant is upheld *qua* the offences punishable under Sections 363/366 IPC and Sections 376/511 IPC.

4. At this stage, learned counsel for the appellant, appearing through V.C., submits that the appellant has a long-standing history of schizophrenia and that he has instructions from the appellant, as well as his family, to pray that the appellant's sentence be modified to the period already undergone by him in custody.

5. In this regard, he submits that the offence in question statedly occurred on 17.10.2012, i.e., prior to the amendment to Section 376 IPC, which came into effect on 03.02.2013. The *proviso* to the unamended Section 376 IPC at the time empowered the Court, for special and adequate reasons to be recorded in writing, to impose a sentence lesser than the minimum prescribed.

6. Learned counsel submits that the record adequately corroborates his contentions regarding the appellant's ailment. Pursuant to the order dated 13.02.2025, the appellant was referred to the Institute of Human Behaviour and Allied Sciences (IHBAS) for a fresh mental health evaluation; and in terms of the Medical Board's report, as noted in the order dated 26.03.2025,



the appellant has been diagnosed with Undifferentiated Schizophrenia and opined to require continuous treatment on OPD/IPD basis.

7. Learned counsel for the appellant further contends that the appellant's conviction is under Sections 376/511 IPC, which attracts a lesser punishment than the substantive offence under Section 376 IPC; and that the appellant has already spent a substantial amount of time under incarceration. In view of the above, the learned counsel for the appellant prays for leniency.

8. Learned APP for the State submits, on instructions, that the appellant is a first-time offender. The same stands confirmed upon a perusal of the latest nominal roll on record, which also reflects that the appellant has already undergone about 5 ½ years of his substantive sentence, and that the unexpired portion of his substantive sentence now stands at about 1 ½ years.

9. The law regarding release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar Vs. State of Chhattisgarh, reported as **2021 SCC OnLine SC 3682**, and the relevant portion of the same is extracted hereinunder:

“28. We thus issue the following directions:

- a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.*
- b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.*
- c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence*



undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts."

10. The appellant, about 46 years of age, is stated to be the only son of old aged parents. He is a first time offender and, as stated above, is suffering from the ailment of schizophrenia, for which he is presently undergoing treatment.

11. Having regard to the fact that the incident pertains to the year 2012, the time already spent by the appellant under incarceration, the facts and law as discussed above, and in view of the aforementioned mitigating circumstances, including his psychiatric condition as reflected in the IHBAS Medical Board report, the appellant's prayer for modification of his sentence to the period already undergone by him is accepted. The conviction of the appellant under Sections 363/366 and 376/511 IPC is upheld; however, the substantive sentence awarded to him is modified to the period of 5 years. As the appellant has already suffered more than the 5 ½ years, he has also undergone the default sentence imposed for non-payment of fine.

12. The present appeal is partly allowed in the above terms.

13. The personal bond furnished by him stands cancelled and his surety is discharged.

14. A copy of this order be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

NOVEMBER 14, 2025/nb