



2025:DHC:11787



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

Reserved on: 20th December, 2025
Date of Decision: 23rd December, 2025

+ **CRL.A. 840/2008**

UMESH KUMAR S/O HORI LAL

.....Appellant

Through: Ms. Rakhi Dubey (DHCLSC) with
Mr. Ashutosh Pandey, Advocate
along with Appellant in person.

versus

STATE (GNCT) OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP with
Mr. Siddharth Goyal and Mr. Arsalan
Naik, Advocates for State.

CORAM:**HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT**

1. By way of the present appeal, the appellant seeks to assail the judgment dated 05^h December, 2007 and the order on sentence dated 11th December, 2007 passed by the trial Court in SC No. 290/06, arising out of the FIR bearing No. 339/2005, registered at Police Station - Shahdara.
2. *Vide* the impugned judgment, the appellant was held guilty for committing the offences punishable under Section 363 IPC and 366A of the Indian Penal Code (hereinafter "IPC") and *vide* the impugned order on sentence, the appellant was sentenced to undergo Rigorous Imprisonment for a period of four years along with a fine of Rs. 10,000/-, and in default of payment of fine, to further undergo RI for one year under Section 363 IPC. He was also sentenced to undergo RI for seven years and pay a fine of Rs. 10,000/- and in default thereof, to further undergo RI for one year under



Section 366A IPC. Both the sentences were directed to run concurrently.

3. The appellant was charged under Section 328/363/365/366/376 IPC on the allegations that on 22nd June, 2005, at about 8:00 PM, on the road from Shahdara to Ashok Nagar, within the jurisdiction of P.S. Shahdara, the appellant kidnapped the prosecutrix from the lawful guardianship of her guardian. After kidnapping her, the appellant administered an intoxicating substance to facilitate the commission of rape, and thereafter took her to his village at Farrukhabad, where he confined her in his house for four to five days. During this period, the appellant kept the prosecutrix in wrongful confinement with the intent to force or seduce her into illicit intercourse and committed rape upon her on several occasions. To the said charges, the appellant pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case has examined thirteen witnesses. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein the appellant had denied incriminating evidence and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

5. Learned Counsel for the appellant has submitted, on instructions, that the appellant is remorseful and, being fully aware of the consequences, does not wish to press the present appeal on merits and confines his submissions only to the quantum of sentence to be modified to the period already undergone.

Per contra, learned APP for the State has argued that the trial Court has passed the order on sentence after considering the material on record and there is no infirmity in the said order.



6. I have heard the learned Counsel for the appellant and learned APP for the State and have examined the record.

7. Since the appellant has chosen not to press the present appeal on merits with respect to his conviction, this Court has not interfered with the findings of the conviction recorded by the trial Court and accordingly, the impugned judgment is upheld.

8. In so far as to the modification of the sentence is concerned, it is submitted that the appellant is presently aged about 52 years. He has faced the ordeal of criminal proceedings for nearly two decades, and there is nothing on record to suggest that he is a habitual offender. He is a poor person and earns his livelihood through farming.

9. The Hon'ble Supreme Court in *Mohammad Giasuddin vs State of Andhra Pradesh (1977) 3 SCC 287* has observed as under:

“9. It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an “in terrorem” outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.

16. ... „A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior



criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. [As observed in Santa Singh v. State of Punjab, (1976) 4 SCC 190 at p. 191: 1976 SCC (Cri) 546]”

Similarly, in ***Pramod Kumar Mishra v. State of Uttar Pradesh, 2023 SCC Online SC 1104***, the Hon’ble Supreme Court while relying on the judgment of Mohammad Giasuddin (supra) reiterated the importance of considering mitigating factors while awarding sentence, particularly in cases involving long pending prosecutions has held as under:

“10. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.”

10. A perusal of the nominal roll shows that the appellant has already undergone sentence of 04 years, 1 month and 17 days (including remission period) out of the sentence awarded. The present case relates to an incident which has occurred 20 years ago while the impugned judgment itself was delivered nearly 18 years ago.

11. After considering the facts and circumstances of this case, aforesaid



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mitigating facts and the law as noted above, this Court is of the opinion that this is a fit case for modifying the impugned order on sentence. Accordingly, while maintaining the conviction of the appellant, the substantive sentence of imprisonment of the appellant is modified to the period already undergone by him in jail. However, the sentence of fine as awarded is maintained. The appellant shall deposit the said fine amount within a period of two weeks from today, failing which the concerned trial Court take the appropriate steps to enforce the sentence of fine as awarded to the appellant by the impugned order of sentence. This modification of sentence is on account of the mitigating circumstances noticed above and it does not, in any manner, impact the seriousness of the offence for which the appellant was convicted.

12. The appeal is partly allowed in the above terms. Pending application(s), if any, stand disposed of.

13. A copy of this judgment be communicated forthwith to the concerned Trial Court and the Jail Superintendent for information and compliance.

**RAJNEESH KUMAR GUPTA
JUDGE**

DECEMBER 23, 2025/MR/TP