

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

% Date of order: 14th March 2022

+ CRL.A. 98/2007

ANAND SINGH Appellant

Through: Mr. Sanjay Rathi and Mr. Deepak
Khatri, Advocates

versus

STATE (NCT OF DELHI) Respondent

Through: Ms. Kusum Dhalla, APP for State

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") has been filed against the impugned judgment dated 9th January 2007 and order of sentence dated 15th January 2007 passed in Session Trial bearing No.76/2002 by learned Additional Sessions Judge, New Delhi in FIR bearing No. 609/98 registered at Police Station Najafgarh, New Delhi for offences punishable under Sections 363/342/376/506/34 of Indian Penal Code, 1860 (for short "IPC") whereby the appellant was convicted under Section 366 of the IPC and sentenced to undergo Rigorous Imprisonment for 3 years and to

pay a fine of Rs.5,000/-, in default of payment of fine to further undergo Rigorous Imprisonment for 3 months. The appellant was further convicted under Section 506 of the IPC and was sentenced to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default to further undergo Rigorous Imprisonment for 3 months.

2. On 25th September 1998, the daughter of complainant, aged about 15 years at the time of incident, left the house for purchasing vegetables but she did not return home despite searching her at the houses of relations and other known persons. A missing report was lodged vide DD No. 43B on 26th September 1998, on the basis of which the aforesaid FIR was registered. On 25th November 1998, the victim was recovered from Village Behat, District Gwalior, M.P. Accused Keshav was arrested by the police. Statement of prosecutrix was recorded wherein she stated that on 25th September 1998 when she had gone to purchase fruits and vegetables, accused Jasbir met her and told that one Sharda had called her at the bus stand of route No. 817. At first, she refused however, when Jasbir insisted she accompanied him. On reaching bus stand of route No. 817, she found that her friend Sharda was not there but Anand Singh, the appellant herein and Keshav were present. She was threatened and thereafter she was taken to a room where Keshav kept her. She was regularly threatened and raped by Keshav against her wishes. She was recovered by the police and was medically examined. Subsequently, the other two accused persons were also arrested. After completion of investigation, chargesheet against the accused persons was filed.

3. Learned Metropolitan Magistrate committed the case to the Sessions Court for trial. All the accused persons were charged for offences punishable under Section 366 read with Section 34 of the IPC and Section 506 read with Section 34 of the IPC. Accused Keshav was also charged for the offence punishable under Section 376 of the IPC. They pleaded not guilty and claimed trial. To bring home the guilt of the accused persons prosecution examined 14 witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. wherein they denied all the allegations and stated that they have been falsely implicated. After completion of trial, the Trial Court vide impugned judgment dated 9th January 2007 reached on the conclusion that prosecution has fully established its case and proved the guilt of the accused persons. All the accused persons in furtherance of their common intention kidnapped the prosecutrix knowing that she would be subjected to sexual intercourse against her wishes by putting her under threat that if she did not accompany them, her brother could be killed. The Trial Court had held appellant herein guilty for an offence punishable under Section 366 read with Section 34 of IPC and Section 506 read with Section 34 of IPC. Subsequently, order on sentence dated 15th January 2007, was passed. All the sentences were directed to run concurrently.

4. Mr. Sanjay Rathi, learned counsel appearing on behalf of the appellant has argued only on the point of sentence without entering into the merits of the case. It is submitted that the appellant is the first time offender and has already undergone 1 month and 4 days and therefore,

the present appeal may be decided on the basis of the period already undergone by him. The incident had taken place on 25th September 1998 and since then, 24 years have elapsed. Moreover, the appeal is pending since 2007 i.e. for about 15 years. The petitioner is having a family and small children. He has not committed any offence after being released on bail in the instant case. He is living as a law abiding citizen of the Country. The prosecutrix has already settled in the society. Therefore, it is submitted that keeping in view of the above facts and circumstances, the instant appeal may be partly allowed on the basis of the period already undergone by the appellant.

5. *Per Contra*, Ms. Kusum Dhalla, learned APP for the State vehemently opposed the submissions raised on behalf of the appellant and submitted that after considering the facts and material available on record, learned Additional Sessions Judge has rightly convicted the appellant and awarded the appropriate sentence as stated above. The period which has already been undergone by the appellant is merely one month and four days which is not sufficient sentence after keeping in view the nature of offence. Therefore, the prayer made by the appellant that appeal may be allowed in terms of the sentence which has already been undergone by the appellant has no merit.

6. I have heard the submissions advanced on behalf of learned counsel for the parties and perused the record.

7. Learned counsel for the appellant, without entering into the merits of the case, prayed that the appeal may be decided on the basis of the period already undergone by the appellant. It is noticed that the incident took place 24 years ago i.e. in the year 1998. There is no allegation by the prosecution that the appellant has criminal antecedents. He is a first time offender and the sentence awarded is only 3 years for offence punishable under Section 366 of the IPC and 2 years for offence punishable under Section 506 of the IPC. There is no minimum sentence prescribed for the offence punishable under Sections 366 and 506 of the IPC.

8. Keeping in view all the facts and circumstances mentioned above, the nature of offence and the period already undergone, it would be appropriate to dispose of the instant appeal on the basis of the period already undergone by the appellant. Accordingly, the instant appeal is partly allowed.

9. The conviction and sentence of the appellant is maintained. However, the sentence is reduced to the period already undergone by him. The fine awarded by the Trial Court shall be deposited within a period of two months from today, if the same has not been deposited. In default of payment of fine within the period specified by this Court, the appellant shall undergo one month of Simple Imprisonment. The appellant is on bail and need not surrender, if not wanted in any other case. His bail bonds are cancelled and surety is discharged. The Trial

Court record be sent back to the Court concerned alongwith the copy of this order.

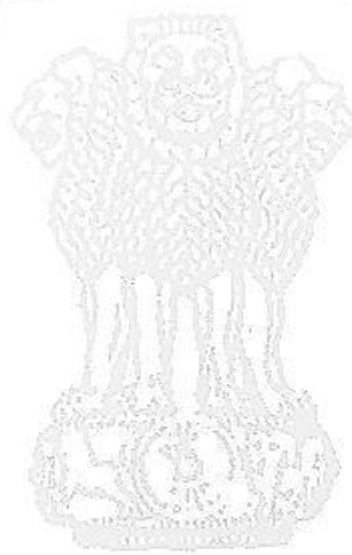
10. The appeal is accordingly disposed of.

11. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 14, 2022

Aj/ms



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