

(2014) 08 DEL CK 0177

Delhi High Court

Case No: Criminal Appeal 387/2013 and Crl. M.A. 10658/2014

Guddu Ram

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

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**Date of Decision:** Aug. 7, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313, 428
- Penal Code, 1860 (IPC) - Section 363, 366

**Hon'ble Judges:** Sunita Gupta, J**Bench:** Single Bench**Advocate:** K. Singhal, Advocate for the Appellant; Ritu Gauba, APP, Advocate for the Respondent

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**Judgement**

Sunita Gupta, J.

Challenge in this appeal is to the judgment dated 24.08.2012 and order on sentence dated 27.08.2012 in Session Case No. 51/12 arising out of FIR No. 17/11, P.S. Palam village, vide which the appellant was convicted for offences u/s. 363/ 366 IPC and was sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs. 2,000/-, in default of payment of fine to undergo Simple Imprisonment for one month for offence punishable u/s. 363 IPC. He was further sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs. 3,000/-, in default to undergo Simple Imprisonment for two months for offence u/s. 366 IPC. Both the sentences were to run concurrently. The convict was granted benefit of Section 428 Cr.P.C.

2. Prosecution case, in nutshell, is that the complainant Arjun Mehto made a complaint regarding kidnapping of his sister "X" (hereinafter referred as Prosecutrix) and stated that he along with his family was residing at Plot No. 188, Murga Farm, Nasir Pur Road, Near Gali No. 5, Mahavir enclave, New Delhi and was a scrapper by profession. He further reported that his sister was enticed away by one

Guddu Ram on 15.01.2011 at about 8 p.m. when she was washing utensils. It is this statement which culminated in registration of FIR u/s. 363 IPC. During the course of investigation, age proof of the prosecutrix was collected by SI Chand Singh from M.C. Primary School Girls, Mangla Puri, according to which, date of birth of prosecutrix was 15.06.1999. On 14.02.2011, information was received that accused along with the prosecutrix had been apprehended, as such SI Chand Singh along with police officials and complainant Arjun Mehto went to village Korari, Bihar. Accused along with prosecutrix was found there. On enquiry, accused Guddu produced marriage certificate and affidavit. Accused was arrested. Accused and prosecutrix were brought to Delhi. Statement of prosecutrix was recorded u/s. 164 Cr.P.C. After completing investigation, charge-sheet was submitted against the accused.

3. Accused pleaded not guilty to the charge u/s. 363/ 366 IPC and claimed trial.

4. In order to bring home the guilt of the accused, prosecution examined eleven witnesses. The case of accused was one of denial simplicitor when all the incriminating evidence was put to him while recording his statement u/s. 313 Cr.P.C. He did not prefer to lead any evidence.

5. After considering the evidence available on record vide impugned judgment, the appellant was convicted and sentenced as mentioned hereinbefore. Assailing the findings of the learned Additional Sessions Judge, the present appeal has been preferred by the appellant.

6. At the outset, Sh. K. Singhal, Advocate for the appellant referred to an application bearing Crl. M.A. 10658/14 sent by the appellant from jail for submitting that the appellant does not challenge his conviction on merits. However, he has already remained in jail for a period of more than three years and four months, as such he be sentenced to the period already undergone.

7. Learned APP for the State however, has opposed the application moved by the appellant on the ground that the prosecutrix was only 11-1/2 years old when she was enticed by the appellant on the pretext that her uncle had met with an accident and thereafter she was taken on motor cycle; forged affidavit of marriage by affixing her photograph which was prepared when she was detained there for one month; it is a crime against women and children and, therefore, the accused deserves to be dealt with an iron hand. Reliance was placed on [Ajahar Ali Vs. State of West Bengal](#), and Shyam Narain (2013) 3 SCC (Cri) 1.

8. The conviction of the appellant for offence u/s. 363/ 366 IPC has rightly not been challenged by learned counsel for the appellant on instructions from the appellant, inasmuch as it has come in the deposition of the prosecutrix that on 15.01.2012 when she was washing utensils outside her house, two boys came and told her that her Mause had met with an accident at Manglapuri and asked her to accompany them and took her on a motorcycle. The pillion rider had gagged her mouth and

took her to Faridabad and kept her in a room for 5-6 days. Thereafter accused Guddu took her to village Khurari in train. Thereafter she was brought to Delhi by the police. Her statement u/s. 164 Cr.P.C. was recorded. She further stated that accused might have pasted her photograph on the affidavit otherwise she never got married with the accused. She went on stating that the accused had not committed rape on her.

9. The factum of prosecutrix being a minor stands proved from the record brought by PW-4 which reflected that prosecutrix was admitted in M.C. Primary School Girls, Manglapuri and as per the school record, her date of birth was 15.06.1999. He also proved the affidavit of Motilal, father of the prosecutrix Ex. PW-4/C wherein he disclosed the date of birth of prosecutrix as 15.06.1999.

10. The factum of kidnapping of prosecutrix stands further proved from the testimony of the complainant which finds corroboration from the testimony of police officials. On receipt of information, SI Chand Singh and other police officials along with her brother and uncle went to Bihar where accused was apprehended and prosecutrix was recovered from his possession. Under the circumstances by clinching evidence, prosecution had succeeded in establishing its case u/s. 363/ 366 IPC. No fault can be found with this finding of the learned Additional Sessions Judge and, therefore, the same does not call for any interference.

11. Coming to the quantum of sentence, the appellant is aged about 23 years. As per the nominal roll, he has undergone sentence of three years, five months and fifteen days. Besides that he earned remission for five months and 22 days. His overall conduct has been reported to be satisfactory. He is not involved in any other offence. Although the minor was kidnapped/enticed by the appellant, however, the prosecutrix has deposed that during the period of one month, she was not subjected to any sexual harassment by the accused. Due to this reason she also refused to undergo her medical examination when after recovery she was taken by the police to the hospital. Shyam Narain (supra) was a case where a brutal rape was committed on an eight year old girl. Therefore, Hon"ble Supreme Court refused to interfere in the sentence awarded to the appellant. Ajahar Ali (supra) was a case of sexual harassment/outraging the modesty of a minor and the appellant sought benefit of probation which was declined by Hon"ble Supreme Court on the ground that if a person uses criminal force upon a woman with intention or knowledge, that woman"s modesty will be outraged, then such a person is not entitled to the benefit of probation. In the instant case at the cost of repetition it may be mentioned that there are no allegations of commission of rape upon the prosecutrix. Moreover the appellant has been in incarceration for a period of about three years and ten months.

12. Under the circumstances, ends of justice will be met if the substantive sentence of imprisonment of the appellant is reduced to the period during which he remained as under trial in this case, however, leaving the portion of imposition of fine as

intact. Accordingly the appellant is directed to deposit the fine with the Superintendent Jail and on deposit of fine, he be released if not wanted in any other case.

The appeal as well as the application stands disposed of. The appellant be informed through the Superintendent Jail for compliance. Trial Court record be sent back.