

\$-R-70

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

DECIDED ON : 27th FEBRUARY, 2015

+ **CRL.A.No.680/2005**

MOHD.JAFFAR ALI @ BABA Appellant

Through : Mr.Ghanshyam Sharma, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through : Ms.Kusum Dhalla, APP.
SI Jagdeep Malik, PS Geeta
Colony.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Open Court)

1. The appellant – Mohd. Jaffar Ali @ Baba impugns the legality and correctness of a judgment dated 12.07.2005 of learned Additional Sessions Judge in Sessions Case No.09/2004 arising out of FIR No.227/02 PS Geeta Colony, by which he was held guilty for committing offences under Sections 363/366 IPC. It is relevant to note that the trial resulted in appellant's acquittal under Section 376 IPC as the prosecutrix

‘X’ (assumed name) was found a consenting party and her age was determined to be above 16 years.

2. Allegations as projected in the charge-sheet against the appellant were that on 20.10.2003, he kidnapped ‘X’ aged around 16 years out of the lawful guardianship of her parents and took her to Bihar. She was kept at various places and physical relations were established. The victim’s father lodged complaint with the police suspecting the appellant. The investigation was assigned to SI Om Parkash. On 06.01.2004, the appellant and ‘X’ were apprehended at village Chakraipur, Distt. Darbhanga Bihar and brought to Delhi. ‘X’ recorded her statement under Section 164 Cr.P.C. After completion of investigation, the accused was sent for trial for committing offence under Sections 363/366/376 IPC. The prosecution examined fourteen witnesses to establish his guilt. In 313 statement, the appellant abjured his guilt and alleged that false case was foisted upon him. He did not examine any witness in defence.

3. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty under Sections 363/366 IPC only and acquitted him of the charge under Section 376 IPC. State did not prefer any appeal against acquittal under Section 376 IPC.

4. During the course of arguments, appellant instructed his counsel not to press findings of the Trial Court on conviction under Sections 363/366 IPC. He, however, prayed to take lenient view as the appellant had already remained in custody for substantial period and is not a previous convict.

5. Apparently, 'X' had accompanied the appellant with her free consent and for that reason, the appellant was exonerated of commission of offence under Section 376 IPC. Since the appellant failed to prove beyond reasonable doubt that 'X' was 'major' on the day of occurrence, he was convicted under Sections 363/366 IPC as her consent was immaterial because of her age. It is significant to note that the age of the prosecutrix was ascertained to be above 16 years by the Trial Court on the basis of a school certificate. On 21.08.1990, at the time of her admission in 1st class, her date of birth was recorded as 14.08.1985. PW-3 (Ms.Kanta Khanna) admitted that the admission form was accompanied by an affidavit disclosing her date of birth and no birth certificate was produced that time. As per ossification report (Ex.PW-9/B), the age of the prosecutrix was determined between 16 to 18 years.

6. Since the appellant has opted not to challenge the findings of the Trial Court on conviction, and the prosecution has established that 'X'

was below 18 years on the day of incident, conviction recorded by the Trial Court is affirmed. The appellant was awarded RI for seven years with fine ₹ 5,000/- under Sections 363/366 IPC. Sentence order records that 'X' has since solemnized marriage and is living happily in her matrimonial home. Nominal roll dated 20.11.2006 reveals that the appellant had remained in custody for three years and ten months besides remission for four months and twenty eight days as on 19.11.2006. He was not involved in any other criminal case and was not a previous convict. His overall jail conduct is satisfactory. His substantive sentence was suspended by an order dated 29.11.2006. His involvement in any such other case has not surfaced after his release on bail. The appellant is now a married man and has children. He has undergone the ordeal of trial / appeal for about 12 years. No useful purpose will be served to send him to custody to serve out the remaining period of sentence.

7. Considering the facts and circumstances of the case, the period already undergone by him in custody shall be taken as his substantive sentence. However, he shall deposit fine ₹ 5,000/- before the Trial Court within two weeks failing which, he shall suffer default sentence SI for one month.

8. Appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

9. Order '*dasti*'.

(S.P.GARG)
JUDGE

FEBRUARY 27, 2015 / *tr*