



2026:DHC:3460



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

Date of Decision: 22nd April, 2026

IN THE MATTER OF:

+ CRL.A. 814/2008

HARISH MAHAJAN S/O LEKH RAJAppellant

Through: Mr. Ajit Kumar, Mr. Raushan Kumar,
Mr. Shivam Singh, Ms. Nutan
Kumari, Mr. Divyan Kumar, Advs.

versus

THE STATE (GOVT OF NCT)Respondent

Through: Mr. Mukesh Kumar, APP for State.
Mr. Manoj Taneja, Advocate for
complainant / Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

VIMAL KUMAR YADAV, J.

1. The present appeal is directed against the Judgment of conviction dated 02.06.2008 and the Order on Sentence dated 03.07.2008 passed by the learned Trial Court, whereby the Appellant was convicted for offences punishable under Sections 363/366/376 of Indian Penal Code 1860 (IPC). For offence under Section 363 IPC, he was sentenced to undergo Rigorous Imprisonment (RI) for a period of 4 years and to pay a fine of Rs. 1000/-, in default of payment he was to undergo RI for a period of 6 months and for the offence punishable under Section 366 IPC, he was sentenced to undergo RI for a period of 5 years and a fine of Rs. 2000/-, in default of payment he was to undergo RI for a period of 1 year and for the offence punishable under Section 376 IPC, he was sentenced to undergo RI for a period of 7



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years and a fine of Rs. 2000/-, in default of payment, he was to undergo RI for a period of 1 year.

2. The prosecution's case, in brief, is that on 03.09.2002, the prosecutrix, a minor aged about 15 years, left her residence for school but did not return. The complainant, her father, lodged a report expressing suspicion that the Appellant, who was earlier a tenant in the same premises, had enticed and taken her away. During investigation, it emerged that the Appellant had taken the prosecutrix in his vehicle from near her school and travelled with her to various places including Haldwani, Almora, Kausani and Nainital. The prosecutrix, in her statement recorded under Section 164 Cr.P.C., alleged that she was rendered unconscious and thereafter subjected to sexual intercourse/acts against her will during their stay at different locations. Appellant and the prosecutrix on the way met with an accident at Haldwani, owing to the Appellant's rash driving following which they proceeded to stay at multiple hotels at multiple locations in hills. The prosecution relied upon testimonies of hotel staff, documentary records, medical evidence and other materials to substantiate its case. On 15.09.2002, the Appellant and the prosecutrix were traced and apprehended at Mall Road, Nainital and brought back to Delhi. The prosecutrix was medically examined and her statement was recorded.

3. The scope of the appeal has now been confined to the aspect of the sentence awarded vide order on sentence dated 03.07.2008. It has been submitted on behalf of the Appellant that he has already undergone 5 years, 9 months and 19 days of incarceration. It is further submitted that he has lost his Government employment and is currently surviving on the meager income by giving tuitions and is facing financial hardship. The Appellant has a marriageable daughter too; therefore, it is sought that the sentence may



be reduced to the period of custody already undergone by him. He has faced the agony and tribulations of a Criminal Trial and Appeal for 24 years. The proviso to Section 376(2)(g) IPC has been invoked for the reduced sentence and aforesaid grounds have been put forth as special and adequate reasons. The Appellant has expressed his willingness to deposit the fine.

4. In support of his arguments, learned counsel for the Appellant has placed reliance on **Baldev Singh & Ors. v. State of Punjab**, (2011) 13 SCC 705, the relevant portion of which is reproduced hereunder:

“3. Admittedly, the appellants have already undergone about three-and-a-half years' imprisonment each. The incident is 14 years old. The appellants and the prosecutrix are married (not to each other). The prosecutrix has also two children. An application and affidavit has been filed before us stating that the parties want to finish the dispute, have entered into a compromise on 1-9-2007, and that the accused may be acquitted and now there is no misunderstanding between them.

4. Section 376 is a non-compoundable offence. However, the fact that the incident is an old one, is a circumstance for invoking the proviso to Section 376(2)(g) and awarding a sentence of less than 10 years, which is ordinarily the minimum sentence under that provision, as we think that there are adequate and special reasons for doing so.

5. On the facts of the case, considering that the incident happened in the year 1997 and that the parties have themselves entered into a compromise, we uphold the conviction of the appellant but we reduce the sentence to the period of sentence already undergone in view of the proviso to Section 376(2)(g) which for adequate and special reasons permits imposition of a lesser sentence. However, we direct that each of the appellant will pay a sum of Rs 50,000 by way of enhancement of fine to the victim envisaged under Section 376 IPC itself. The fine shall be paid within three months from today. In the event of failure to pay the enhanced amount of fine it will be recovered as arrears of land revenue and will be given to the victim.”

Additionally, the learned counsel for the Appellant has also placed



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reliance on the following judgments to hammer his point that sentence even less than the minimum prescribed, may be imposed when the circumstances so warrant:-

- a. ***Ravindra v. State of Madhya Pradesh***, Criminal Appeal no. 1410 of 2013;
- b. ***Amad Noormamad Bakali v. The State of Gujarat and Others***, 2026 SCC OnLine SC 292;
- c. ***Mohd. Raju@ Raju v. State NCT of Delhi***, CRL.A. 470/2020;
- d. ***Surendra Kumar v. C.B.I.***, 2025 SCC OnLine Del 4788;
- e. ***Neeraj @ Shanky Singhal @ Kalu v. The State (Govt of NCT of Delhi) and Anr.***, CRL.A. 1110/2024;
- f. ***Ashutosh @ Sonu v. State NCT of Delhi Through SHO PS Govind Puri***, CRIL.A. 285/2024;
- g. ***Dharminder Kumar v. State of Haryana***, CRA-S-1849-SB-2004;
and
- h. ***Gulsher Singh v. State***, CRL.A. 141/2009.

The powers of the Hon'ble Supreme Court under Article 142, which has been involved in the aforesaid judgment are special and available exclusively to the Apex Court. However the inherent idea is to secure the ends of justice.

5. The facts of the present case in hand reflect that during the pendency of the present appeal, the Appellant had approached the Court by way of an application seeking suspension of sentence. The said application was preferred in the backdrop of the fact that the Appellant had been convicted for the offences punishable under Sections 363/366/376 IPC and sentenced



to undergo rigorous imprisonment for various terms as mentioned earlier the maximum being a period of 7 years along with fine. It was, inter alia, submitted on behalf of the Appellant that he had already undergone a substantial portion of the sentence, i.e., approximately 5 years and 9 months and 19 days of incarceration (including remission). It was also urged that the conviction of the Appellant essentially stemmed from the legal position regarding the age of the prosecutrix, inasmuch as she was held to be below 16 years of age at the relevant time, thereby rendering her consent immaterial in the eyes of law. Considering the entirety of these circumstances, particularly the period of custody already undergone by the Appellant, this Court vide order dated 18.02.2009 was pleased to suspend the remaining substantive sentence and admitted the Appellant to bail, subject to conditions, including the stipulation that the Appellant and his family shall not, in any manner, directly or indirectly, contact the prosecutrix.

6. The Nominal Roll filed on record reflects that out of 07 years of sentence, the Appellant has already undergone 5 years, 9 months and 19 days in custody.

7. The learned Trial Court has also taken note of the fact that the Appellant was a married person, had proximity with the family of the prosecutrix and, therefore, stood in a position of trust which was breached. On that premise, the mitigating circumstances sought to be projected, namely family dependency and personal hardship, were held to be insufficient to constitute “adequate and special reasons” for reduction of sentence below the prescribed minimum. Incidentally, the situation remains unaltered even now.

8. However, a significant development, which assumes relevance in the



present context, is the submission put across by the learned counsel for the Complainant that the Complainant has no objection to the plea of the Appellant seeking reduction of sentence to the period already undergone. The law requires a tighter scrutiny of every material aspect of the case including the one at hand, without going into tunnel vision on a singular aspect of the case without going into tunnel vision on a singular aspect. It nevertheless, constitutes a relevant circumstance reflecting the absence of any subsisting grievance or enmity from the side of the Complainant towards the Appellant at this stage.

9. In *Sonadhar v. State of Chattisgarh* in SLP(CRL) No. 529/2021 dated 06/10/2021, it was observed as reproduced hereunder:-

“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 the 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 the respect of ‘life sentence’ cases where the sentenced persons are entitled to remission of their remaining sentence i.e., whether they would*



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still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.”

In the instant case, the Appellant has undergone practically the substantial rather almost the entire sentence of 7 years by remaining in custody for 5 years 9 months and 19 days, which carve out a case in favor of the Appellant, if read in conjunction with the additional facts put across qua his employment, financial status, period of the criminal trial and appeal, family responsibilities etc.

10. Thus, considering the entire gamut of facts and circumstances, including the nature of the offence, the period of custody already undergone, and the subsequent developments which have been brought to this Court's attention such as the Appellant's financial condition, loss of regular Government employment and the consequential benefits thereof, the express non-objection on behalf of the Complainant (father of the prosecutrix) to the plea of reduction of the sentence of the Appellant, the question which arises is whether the present case can be said to fall within the category of exceptional cases warranting departure from the prescribed minimum sentence for “adequate and special reasons”. The expression “adequate and special reasons” has not been defined in rigid terms and necessarily, on practical application, requires contextual interpretation. It requires the Court to balance all the circumstances present in the case, on one hand, the gravity of the offence and its impact on society weighs, on the other hand, the individual and exclusive circumstances of the case, including post-



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conviction developments and the effect of prolonged incarceration etc. which too stand and stare thus, cannot be ignore either.

11. In the present case, the Appellant has already undergone a substantial period of incarceration. The continuation of the remaining sentence, in the backdrop of the facts noted above, does not appear to advance the cause of justice any further. Rather, it would result in prolonging the consequences of incarceration without any corresponding societal benefit, particularly when viewed in light of the absence of opposition from the complainant's side.

12. At the same time, it is necessary to underscore that the conviction recorded against the Appellant is based on due appreciation of evidence and has attained finality. The culpability of the Appellant, therefore, stands established and is not open to dilution.

13. Accordingly, in the peculiar facts and circumstances of the case, in the interest of justice, it would be appropriate to modify the sentence awarded to the Appellant to the period already undergone by him, which, in the considered view of this Court, would sufficiently meet the ends of justice. However, the fine of Rs. 2000/- imposed upon him under Section 376 IPC stands enhanced to Rs 25,000/-, which shall be deposited with the Trial Court within a month from today and shall be realized as arrears of land revenues, in case of default.

14. Appeal stands disposed of accordingly. Pending application(s), if any, shall also stand disposed of.

15. Copy of this order be forwarded to the concerned Trial Court and concerned Jail Superintendent.

VIMAL KUMAR YADAV, J

APRIL 23, 2026/akc