



2025:DHC:6602



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

% Date of Decision: 06.08.2025

+ **CRL.A. 689/2023 and CRL.M.(BAIL) 1204/2023**

RESHMA@LOVELY

..... Petitioner

Through: Ms. Tanya Agarwal, Advocate with
Appellant through V.C. with Matron
Munesh

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CRL.M.(BAIL) 1204/2023 (application seeking suspension of sentence)

1. With the consent of the parties, the appeal itself is taken up for consideration.
2. In view thereof, the present application has become infructuous and is accordingly disposed of.

CRL.A. 689/2023

1. By way of the present appeal, the appellant seeks to assail the judgement of conviction dated 10.03.2023 and order on sentence dated 18.07.2023, passed by learned ASJ-04, Special Judge (NDPS), South East District, Saket Courts, New Delhi in SC No. 61/2023 arising out of FIR No. 71/2013 registered under Section 370/363 IPC at P.S. H. N. Din, New Delhi.



Vide the order on sentence, the appellant was directed to undergo simple imprisonment for a period of 7 years for the offence punishable under Section 363 IPC alongwith payment of fine of Rs.1,00,000/- in default whereof, he was directed to further undergo simple imprisonment for a period of 6 months. The benefit of Section 428 Cr.P.C. was provided to the appellant.

2. Pithly put, the case of the prosecution is that on 08.03.2013 at around 6:15 PM near Dargah Nizamuddin, Bawali Gate, Basti, New Delhi, the appellant forced an eight year old girl named K to eat a chocolate after which she became unconscious and thereafter the appellant kidnapped her younger sister P. When K regained consciousness, she informed her mother who filed the complaint. The FIR came to be registered just after midnight against unknown person.

The appellant came to be arrested from the same spot in another FIR No. 106/2013 registered under Section 363 IPC at PS H. N. Din where she disclosed her involvement in the present case. On being informed, the investigation officer, arrested the appellant in subject FIR.

3. The Trial Court framed charges against the appellant under Sections 363/370 IPC, to which she pleaded not guilty and claimed trial. The prosecution cited a total of 8 witnesses. The complainant, who was the mother of P, was examined as PW1. The elder sister, K was examined as PW4. *Chhaina Begum*, the complainant in the other FIR was examined as PW2. The rest of the witnesses were formal who deposed as to various aspects of investigation.

On the other hand, the appellant, in her statement recorded under Section 313 CrPC, claimed innocence and false implication. She took the



plea of alibi and in support, examined Sh. *T.V. Dattu*, Chief Ticket Inspector as DW2, *Dinesh Niyal*, an auto driver as DW-3 and *Ashok Kumar Pagaria*, a jeweller as DW-4.

4. Pertinently, K, who was examined as PW4, deposed that when she was going from the dargah to her residence with her younger sister, the appellant offered her a chocolate. When PW4 said that she would have the chocolate later, the appellant insisted her on having the chocolate right there. She further stated that after eating the chocolate, she became unconscious. Upon gaining consciousness in an hour, she found her sister missing. The Court also noted the demeanour of the child witness who had started crying and on that account, the cross-examination was deferred for 15 minutes. In her cross examination, she clearly stated that she saw accused for the first time when she had taken her sister after she had become unconscious.

5. The Trial Court found that the testimony of the eyewitness (PW4) was credible, reliable and consistent and that nothing had come out in her cross examination which could shake her veracity. The inconsistencies were found to be minor in nature and inconsequential. No allegation of prior enmity or motive for false implication was put forth by the appellant. Although the appellant had taken a plea of alibi and examined some witnesses in her defence, the same did not find favour with the Trial Court as none of them could establish the physical impossibility of the presence of the accused at the scene of the offence. Thus, the offence under Section 363 IPC was found to be clearly established. However, since the prosecution could not demonstrate that the victim was subjected to any exploitation, the offence under section 370 IPC could not be held to be proved.

Before this court, though learned counsel for the appellant contended



that plea of alibi was successfully established, however, it is noted that the ticket relied by the defence for travel on 16.03.2013 from Raipur to Nizamuddin, Delhi was only a waitlisted ticket that was never confirmed. Further, the testimony of other defence witnesses was also not reliable. DW-4 rather stated that he could not identify the appellant.

The testimony of sister is consistent and credible on the identity and role of the appellant. Pertinently, the child could never be recovered.

6. At this stage, learned counsel for the appellant, on instructions from the appellant, who has been produced by Matron Munesh through V.C. from Central Jail-06, Tihar, New Delhi, states that the appellant, being fully aware of the consequences, does not wish to challenge her conviction under the aforesaid section; however, she prays that the sentence awarded to her be modified to the period already undergone by her. It is sated that the appellant stands acquitted in the other FIR.

7. Even otherwise, this Court, based on the material produced and keeping in mind that the appellant stood duly identified by the eyewitness PW4 and a conjoint reading of her examination-in-chief and cross examination would show that the offence under Section 363 IPC was clearly established against her, concurs with the findings of the Trial Court and finds that no grounds to interfere with the same are made out. Consequently, the conviction of appellant is upheld qua the offence under Section 363 IPC.

8. The learned APP, on instructions from the concerned I.O., confirms that the appellant was acquitted under Section 363 IPC by the Trial Court in a different case arising out of FIR No. 106/2013, and apart from which she has no other criminal antecedents.

9. The latest nominal roll on record indicates that the appellant has



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served nearly 3 years of incarceration and her jail conduct is stated to be satisfactory. The appellant is aged about 45 years and is the sole bread earner for her family comprising of four minor children. The appellant is facing trial since the year 2013.

10. Keeping in view the aforesaid, the judgment on conviction is upheld however, the order on sentence of appellant is modified to the period already undergone. The sentence of fine is also reduced to Rs. 25,000/- failing which the appellant is directed to undergo SI for a period of one week.

11. A copy of this order be communicated to the Trial Court as well as to the concerned Jail Superintendent.

12 The present appeal is disposed of in the above terms.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 6, 2025/ry