

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

RESERVED ON : 29th MARCH, 2016
DECIDED ON : 05th APRIL, 2016

+ **CRL.A. 1006/2014**

ZAHEER ALAM Appellant
Through : Mr.S.B.Dandapani, Advocate.

VERSUS

STATE (GNCT OF DELHI) Respondent
Through : Mr.Vinod Diwakar, APP.

AND

+ **CRL.A. 1400/2014**

RESHMA Appellant
Through : Mr.Neeraj Bhardwaj, Advocate.

VERSUS

STATE Respondent
Through : Mr.Vinod Diwakar, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 30.04.2014 of learned Addl.
Sessions Judge in Sessions Case No.153/2011 arising out of FIR

No.219/2011 PS Gandhi Nagar by which the appellants – Zaheer Alam (A-1) and his wife Reshma (A-2) were convicted for committing offences punishable under Sections 363/365/376/34 IPC and 363/365/34 IPC & 109 IPC read with Section 376 IPC respectively, they have preferred the instant appeals. By an order dated 09.05.2014, they were awarded various prison terms with fine.

2. Allegations against the appellants as reflected in the charge-sheet were that on 18.08.2011 at about 07.00 A.M. at Main Road Gandhi Nagar, they, in furtherance of common intention kidnapped the prosecutrix 'X' (changed name), a minor aged around 13 years out of the lawful guardianship of her parents with an intention to secretly and wrongfully confine her. After the kidnapping, she was taken to Ludhiana (Punjab) where she was sexually assaulted by A-1 during the period from 18.08.2011 to 01.09.2011.

3. On 18.08.2011, 'X' as usual had gone to school at about 07.00 a.m.; she did not return after school hours and went missing on her way to school. Efforts were made to search her at various places but she could not be traced. Finally, victim's parents approached the police. The Investigating Officer after recording statement of the victim's father - Krishan Lal (Ex.PW-2/A) lodged First Information Report. The victim's

parents and the police officials went here and there for her recovery but to no effect. On 01.09.2011, the Investigating Officer received an information about X's presence along with the appellants at Ludhiana (Punjab). She was recovered from House No.662, Basti Jodhwal at A-1's instance. She was brought to Delhi and medically examined; she recorded her 164 Cr.P.C. statement. The accused persons were arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against both the appellants in the Court. The prosecution examined fifteen witnesses to substantiate the charge. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, they have filed the present appeals.

4. During arguments, learned counsel for A-1, on instructions, stated at Bar that A-1 has opted to not challenge the findings of the Trial Court on conviction. He prayed to modify the substantive sentence as he (A-1) has remained in custody for sufficient duration; he is to take care of his four minor children in the absence of his wife who happens to be in custody along with him in this case.

5. A-2's counsel, on instructions, informed that A-2 has also given up challenge to the findings on conviction under Sections 363/365/34 IPC. He, however, urged that the prosecution was unable to establish beyond reasonable doubt if A-2 had ever abetted her husband (A-1) to sexually assault the victim. Attention was drawn to X's statement wherein she had admitted that at the time of rape, A-2 was not present and had arrived there later on. Learned Addl. Public Prosecutor urged that A-2 was privy to the kidnapping and was aware of commission of rape with the prosecutrix.

6. Since A-1 and A -2 have voluntarily opted to give up challenge to the findings on conviction under Sections 363/365/34 IPC and overwhelming evidence too is on record to establish their complicity, their conviction for the aforesaid offences is affirmed. Similarly, in the absence of challenge, A-1's conviction under Section 376 IPC is affirmed. The prosecutrix has categorically deposed that she was repeatedly ravished by A-1 in the rented accommodation at Ludhiana (Punjab) where she was confined after kidnapping. Since 'X' was below 16 years of age; her date of birth being 24.09.1998 as per school record (Ex.PW-1/C), not under challenge, even her consent (if any) for physical relations with A-1 was of no consequence.

7. A-2's submissions denying her complicity in the abetment of rape by her husband are devoid of force. A-2 had played an active role in X's kidnapping from the very inception and it was in her knowledge that both A-1 and 'X' were present in the rented accommodation at Ludhiana (Punjab). She had stayed there for sufficient period with them after the incident. At no stage, she bothered to get the prosecutrix released from A-1's captivity. She did not inform X's parents about her whereabouts when they were frantically searching their lost child. 'X' and A-1 lived together for sufficient duration at Ludhiana far away from Delhi. She did not initiate any action when her husband did not visit her at Delhi for so long. PW-9 (Balbir Chand), landlord, deposed that on 13/14.08.2011, A-1 had come along with a 'local' man for taking the room on rent for the family. The rent was settled as ₹1,100/- per month and ₹100 were paid as advance on the assurance to occupy it on 18.08.2011. A-1 along with a 'girl' to whom he described his sister-in-law arrived on 18.08.2011 at 04.00 p.m. in the said room pretending that his wife was in PGI to take care of her ailing brother admitted there. They both started living in the rented room. On 20.08.2011 at about 06.30 a.m. A-2 came in the room and stayed there for about two hours. She went away at around 8 O'clock telling that she and her brother would go to Delhi from PGI and she would get him

admitted there. On 25/26.08.2011, A-2 again came carrying a trunk, a folding bed and some other household goods at about 04.00 a.m. and started living in the rented accommodation. He further deposed that A-2 did not allow the said 'girl' to talk to anyone; she was also not allowed to go outside. The appellants took the said girl namely 'X' with them at about 7 O' clock after packing household goods informing that he would come back after leaving her to an acquaintance. This independent witness having no familiarity with the complainant at Delhi had no oblique motive to make a false statement. Apparently, 'X' was kept in the rented accommodation till her recovery by the police. The appellants did not bother to inform X's parents about her whereabouts. They had no occasion or reason to take the prosecutrix, a minor with them at a far away place without the permission or consent of her parents with whom they were well acquainted before the occurrence. During this period, not only the prosecutrix was kept away from her parents, she was sexually assaulted by A-1 already married to A-2. During that period, A-2 also stayed in the said accommodation. She misled the landlord about X's identity. At no stage, she compelled A-1 to allow the prosecutrix to go to her parents. Needless to say, she was aware as to what was going on between the prosecutrix and A-1 during that period. She had played an

active role in the commission of the offence by A-1 at all stages. She had facilitated the commission of crime knowing fully well that 'X' was wrongfully confined by A-1 there. A person who aids and abets the actual perpetration of the crime at the very time when it is committed, comes under Section 109 IPC. It is not necessary that the accused must be present at the time of offence. The law does not require that the instigation should be in a particular form or that it should only in words and may not be by conduct. From the circumstances referred, it can be deciphered with certainty that A-2 was privy to the whole episode and never offered any opposition to it. A-2's conviction under Sections 109/376 IPC based upon fair appraisal of the evidence cannot be faulted and is affirmed.

8. Taking into consideration the gravity of the offence whereby a child aged around thirteen years was subjected to sexual assault repeatedly by A-1, a married person, aged around forty years, it is not a case for reduction of sentence awarded by the Trial Court. Both the appellants were hand in glove with each other. The Court can well understand the trauma of the victim's parents who were not aware as to where their little child was for so long. Sentence Order is based upon fair reasoning and calls for no intervention. The appeals lack merits and are

dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

APRIL 05, 2016 / *tr*