

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

DECIDED ON : 4th October, 2013

+ **CRL.A.309/2001**

KALLU

..... Appellant
Through : Ms.Yashita Munjal, Advocate.

versus

STATE OF GOVT. OF N.C.T. OF DELHI

..... Respondent
Through : Mr.M.N.Dudeja, APP for the State.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. Kallu (the appellant) challenges the correctness of a judgment dated 18.04.2001 in Sessions Case No.59/2000 arising out of FIR No.112/2000 registered at Police Station Gokalpuri by which he was held guilty for committing offence under Section 363 IPC. By an order dated 19.04.2001 he was sentenced to undergo RI for seven years with fine `10,000/-.

2. Allegations against the appellant were that on 14.03.2000, complainant-Ganga Vishal Yadav lodged report with the police that his son Manoj aged 6 years was missing. On 15.03.2000 at about 05.00 P.M.

a telephone call was received on his phone No.2264953 at his house which was attended by his wife Smt.Nirmla. The caller demanded ransom amount of `1,00,000/- to release the child which was in his custody or else threatened to kill him. He disclosed his name as Kallu. In subsequent conversation on telephone with the caller, Ram Pratap-brother of Ganga Vishal Yadav told him that the amount of `1,00,000/- would be given for the release of the child and they asked the caller to have a talk with the child. The voice of the child was identified. The complainant-Ganga Vishal Yadav went to tempo stand with ransom amount of `1.00,000/-. The matter was reported to the police. On 16.03.2000 the complainant with the police team arrived at Fatehpur. A telephone call was made to Kallu at about 06.45 P.M. The child was recovered from the bushes situated near the Dalmow Road. Kallu was arrested and interrogated. He led the police team to Bobby STD booth owned by Kailash Gupta from where he had made telephone calls. Statement of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet under Section 363/364A IPC was submitted against him in the court. The prosecution examined 11 witnesses. In his 313 statement the appellant pleaded false implication. He examined Ram Kishore (DW-1) and Mohd.Rafiq (DW-2) in defence. On appreciating the evidence and

after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted the appellant under Section 363 IPC and sentenced him accordingly. He was acquitted of the charge under Section 364A IPC. The State did not challenge his acquittal under Section 364A IPC.

3. During the course of arguments, appellant's counsel on instructions, stated at Bar that the appellant has opted not to challenge the finding of the Trial Court on conviction for the offence under Section 363 IPC and accepts it voluntarily. She, however, prayed to take lenient view as the appellant has already remained in custody for substantial period in this case and has clean antecedents. The learned Additional Public Prosecutor has no objection to consider the mitigating circumstances to modify the sentence order. Since the appellant has opted not to challenge the conviction under Section 363 IPC and there is overwhelming evidence in the testimony of PWs, the findings of the Trial Court on conviction under Section 363 IPC are affirmed. The appellant was sentenced to undergo RI for seven years with fine `10,000/-. Nominal roll dated 15.11.2010 reveals that he has remained in custody for three years, seven months and two days as on 20.10.2003. He also earned remission for eight months and 21 days as on 15.11.2010. He is a first offender and was

not involved in any criminal case. His overall jail conduct was satisfactory. After suspension of sentence and enlargement on bail on 19.09.2003 his involvement in any criminal case has not surfaced. The prosecution was unable to establish the charge under Section 364A IPC whereby the child was kidnapped for ransom. The appellant was aged about 18 years on the date of incident. Nominal roll dated 15.11.2010 records his age 23 years. At the time of addressing arguments on the point of sentence, age of the appellant was claimed 17 years at the time of commission of offence and this facts finds mention in the sentence order. The police had recorded his age in the charge-sheet as 19 years. Taking into consideration all these mitigating circumstances, the sentence of the appellant is modified and the appellant is sentenced to undergo the period already spent by him in this case.

4. The appeal stands disposed of. Trial Court record, if any, along with copy of this order be sent back to the Trial Court. Bail bond and surety bond of the appellant stand discharged. Superintendent Jail be informed.

(S.P.GARG)
JUDGE

October 04, 2013/sa