

(2011) 07 DEL CK 0464

Delhi High Court

Case No: Criminal Appeal No. 849 of 2010

Khalid

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 6, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 323, 328, 344, 365, 367

Citation: (2011) 6 AD 553 : (2011) 3 JCC 1888

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Anita Abraham, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision: Dismissed

Judgement

1. By this appeal, the Appellant has laid a challenge to the judgment dated 15th December 2007 convicting him for offence punishable under Sections 328/365/367/344/323 IPC and order on sentence dated 2nd January, 2008 whereby he was directed to undergo Rigorous Imprisonment for a period of four years and fine of Rs. 10,000/- for offence punishable u/s 328 IPC. In default of payment of fine, he was directed to undergo Rigorous Imprisonment for six months. He was directed to further undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 10,000/- for offence punishable u/s 365 IPC. In default he was directed to undergo Rigorous Imprisonment for six months. He was also directed to undergo Rigorous Imprisonment for four years and to pay a fine of Rs. 10,000/- for offence punishable u/s 367 IPC. In default of fine he was directed to further undergo Rigorous Imprisonment for six months. He was also sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 2,000/- for offence punishable u/s 344 IPC. In default of payment of fine, he was directed to further undergo Rigorous Imprisonment for three months. He was also sentenced to undergo Rigorous Imprisonment for six months for offence punishable u/s 323 IPC. Thus, the

Appellant in total has been directed to undergo Rigorous Imprisonment for four years and a fine of Rs. 32,000/- and in default of payment of fine to undergo further Rigorous Imprisonment for one year and nine months.

2. In brief the prosecution case is that one Deepak went missing, for which a missing report was lodged by his father on the 30th November, 2005. Since there was no clue of Deepak, the missing report was converted into an FIR for an offence punishable u/s 363 IPC. On 7th August, 2006 Deepak went to fetch water at a public hydrant in village Bhamrui, District Rampur, U.P. where a mela was going on. From the hydrant he was taken by the village boys to the village Pradhan Atiq Ahmed to whom Deepak told about his tale of woes that he has been abducted by a Kala Jadu Wala. Atiq Ahmed passed on the address of Deepak's parents and the facts to Jagdish Saran, Manager, Vishal Samaz Vikas Sansthan, Civil Lines, Rampur who in turn informed the ACP Crime Branch Delhi. Pursuant thereto Deepak's father along with the Police party, Jagdish Saran and Atiq Ahmed recovered Deepak from the custody of the Appellant Mohd. Khalid. Deepak was brought to Delhi and his MLC Ex. PW8/A was prepared by Dr. Zothuamluam at GTB Hospital, Shahdara. Deepak and other witnesses were examined and after the examination of the accused u/s 313 Code of Criminal Procedure., the Appellant was convicted and sentenced as above.

3. The present appeal was filed belatedly when he had undergone the substantive sentence and was undergoing sentence in default of payment of fine. The Appellant who was present on production on all dates of hearing at the outset stated that the Appellant had already undergone his substantive sentence and the sentence in default of payment of fine was also going to be complete shortly and, thus, he does not want to pursue the present appeal. However, a notice of enhancement of sentence u/s 365/367 IPC was issued to the Appellant by this Court vide order dated 4th October, 2010. As regards notice of enhancement a reply has been filed stating that the ingredients of the offences alleged are not made out and there are material inconsistencies in the testimony of the witnesses. The alleged stupefying substance has not been recovered nor identified. The missing report was filed by the father belatedly as Deepak had allegedly gone missing on 3rd November, 2005. However, the missing report was lodged only on 30th November, 2005. There are inconsistencies in the evidence of recovery of PW1 Deepak. As per the MLC of PW1 the injuries were allegedly inflicted three days ago and were caused by blunt object. The prosecution has not been able to establish that the alleged injuries were caused by the Appellant. The recovery memo of Deepak Ex. PW3/A is dated 14th August 2006 whereas MLC of Deepak is dated 13th August, 2006. There are cuttings also in the MLC which have not been initialed. The entire version of the prosecution seems suspect. Relying on [Bed Raj Vs. The State of Uttar Pradesh](#), it is contended that the enhancement of sentence should be resorted to only if the sentence imposed is grossly inadequate.

4. Learned APP on the other hand contends that the statement of PW1 clearly implicates the Appellant. PW1 Deepak told about his harassment to PW4 Atiq Ahmed who has supported his version. Not only in the MLC but even while recording the statement of PW1 the Learned Metropolitan Magistrate has observed the injuries on the person of PW1. The discrepancy in the date on the MLC is inconsequential and the same is in a separate hand-writing and thus a typographical error. The MLC could not have been dated 13th August, 2006 as the child was recovered on 14th August, 2006, which is the consistent statement of all the witnesses. In view of the treatment meted out to a small child PW1, the sentence awarded by the Learned Additional Sessions Judge was highly inadequate and calls for interference by this Court.

5. I have heard learned Counsel for the parties and perused the record. Learned Counsel for the Appellant contends that the Appellant has already undergone the sentence awarded to him and is now only undergoing the in default imprisonment which is also going to end shortly. The issue which remains to be dealt in the present appeal is whether there should be enhancement of the sentence awarded to the Appellant. PW 1 Deepak was abducted and wrongfully confined by the Appellant on the 3rd November, 2005. He has stated that on the day of incident, he had gone to see the Mela without informing his parents about the same and fascinated by a magic stall he kept on standing there without noticing that public had withered away. Thereafter, the Appellant dragged him inside the stall and put a handkerchief on his mouth as a result of which he became unconscious and from there he was taken to Tighri Garh, U.P. Appellant forced him to learn magic and line with him. This witness has stated that as and when he used to tell the Appellant that he wants to go to his house, the Appellant used to beat him and on one occasion he burnt him on his left shoulder. When he was taken to Bhamrawa ka Mela, he worked there for 5-6 days and when one day he went to the house of Pradhan of the village to fetch water, he was weeping at that time. When the Pradhan enquired PW1 narrated the entire facts before him and gave his postal address to him. From there he was taken to village Juthia. He was made to live in that village one or two days. In the village, his father reached there with the police and he along with Mohd. Khalid were brought to Delhi. This witness has further stated that the accused used to beat him badly almost everyday. In his cross-examination, PW1 has stated that since the native of the village of the accused were there in the village, he had not made any complaint to any one in village Juthia. PW4 Atiq Ahmed, who was the Pradhan of village Bhamrawa since 2005, has stated that on 7th August, 2006 during evening hours a boy came to a public hydrant in front of his house to fetch water. The other children who were present in front of his house to fetch water brought that boy before him and he told him that he was abducted by a Kala Jadu Wala. On enquiring about his address, the boy gave the address of some colony in Delhi. Thereafter, he narrated this incident to PW5 Jagdish Sharan who used to run an organization named Vishal Samaj Vikas Sansthan and wrote a letter at the address given by that

boy. This testimony of PW4 is duly corroborated by the testimony of PW5 Jagdish Sharan who has deposed that PW4 had told him about the fact that one child who hails from Delhi has been confined by a person who shows Kala Jadu. PW4 also told him that the boy Deepak was present at village Bhambura & was a resident of a colony, near Bhajanpura, Delhi After recording the said facts he sent a fax message to ACP Crime Branch, Delhi. On the night of 13th August 2006 the Police reached his house. From the testimony of PW4 and PW5 it is clear that the police reached at the house of PW5 on 13th August, 2006 who took them to the house of PW4 where they came to know that the boy was in village Jhuthia. PW4 and PW5 accompanied the police and the father of PW1 to village Jhuthia and Deepak was recovered from near a hand pump. Appellant Mohd. Khalid was also present. Thereafter Deepak & Mohd. Khalid were brought to Delhi. Thus I find no force in the contention of the learned Counsel for the Appellant that there is discrepancy in the date recorded on the MLC and as to when and how Deepak was recovered from village Jhuthia.

6. Learned Counsel for the Appellant has relied upon the decision of Hon"ble Supreme Court in [Bed Raj Vs. The State of Uttar Pradesh](#), Their Lordships in the said case have held that ordinarily there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate.

7. In the present case, a perusal of the MLC Ex. PW8/A shows abrasions on the body of the victim and the object used for causing such bodily injuries to PW1 was a blunt object. Learned Trial Court after appreciating the evidence, sentenced the Appellant as mentioned above, which he has already undergone and is now undergoing the sentence in default of payment of fine. The mitigating facts considered by the learned trial Court were the young age of the Appellant and that he was not involved in any criminal case earlier. Though the learned Trial Court held that the facts make out an alarming offence and thus no case is made out to deal with the Appellant leniently or release him on probation, but still it awarded him sentence of Rigorous Imprisonment for four years. Though while exercising the discretion, the Trial Court on the facts of the case could have awarded a more severe sentence, however it cannot be held that the learned Trial Court awarded grossly inadequate sentence. As held by the Hon"ble Supreme Court, this Court will interfere in the said discretion of the Learned Trial Court only if the sentence awarded is grossly inadequate, which is not the case in the present appeal. Thus, keeping in view the facts and circumstances of the present case and the law laid-down by the Hon"ble Supreme Court in Bed Raj(supra). I find no reason to enhance the sentence of the Appellant.

8. The appeal is accordingly dismissed. The Appellant be informed through Superintendent, Central Jail Tihar.