

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

Judgment delivered on: October 25, 2010

+ **CRIMINAL APPEAL NO.484/2005**

ANIL KUMAR SHARMA & ANR. APPELLANTS

Through: Ms. Neelam Grover, Advocate

Versus

STATE RESPONDENT

Through: Mr. Pawan K. Bahl, APP

WITH

CRIMINAL APPEAL NO.521/2005

SOMVIR SINGH APPELLANT

Through: Mr. Om Dutt Sharma, Advocate

Versus

STATE RESPONDENT

Through: Mr. Pawan K. Bahl, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. These appeals are directed against the impugned judgment and order on sentence respectively dated 19th and 20th May, 2005 of learned Additional Sessions Judge in Sessions Case No.37/04 FIR

no.253/03 P.S. Sarai Rohilla, whereby the appellants have been convicted on the charge under Sections 363/365 IPC and sentenced to undergo RI for the period of three years, besides fine of ₹2500/- each, in default of payment of fine to undergo RI for a further period of three months.

2. Briefly stated, case of the prosecution is that on 04.08.2003, an information regarding the missing of Deepak @ Bunty aged five years was received at police post Inderlok, P.S. Sarai Rohilla. Information was recorded as DD No.27 and copy thereof was entrusted to SI Ram Avtar for verification. SI Ram Avtar reached at the spot i.e. House No.313/101-J, Tulsi Naar, Delhi where he recorded the statement of PW3 Jyoti (Ex.PW3/A), who stated that on 04.08.2003 at about 2:00 pm, her cousin Monu @ Anil Sharma visited their house. During their conversation, he time and again asked whether or not the father of the complainant Jyoti was present in the house or her mother was sleeping. Thereafter, appellant Anil Sharma @ Monu took Bunty as well as her other brother Honey along with him. After some time, Honey came back and when she asked Honey about Bunty, he told that Bunty was with the appellant Monu. Thereafter, she saw from the balcony of the house that Bunty was sitting on the motorcycle of appellant Monu and one other boy was sitting on the pillion of the motorcycle. The identity of the other boy, during investigation, was revealed as Somvir. Jyoti further stated in her complaint that Monu stopped his motorcycle at the corner of the gali where the said other boy Somvir got down and he

went away along with Bunty. When Bunty did not return, she informed her mother. At around 6:30 pm, a phone call was received by her father and after attending to the phone call, her father told that the caller was demanding ₹15 lakhs for release of Bunty, failing which he had threatened to kill him. On the basis of said statement, formal FIR was registered and investigation was entrusted to SI Ram Avtar. During investigation, Sunil Kumar Sharma and Anil Kumar Sharma were arrested on 04.08.2003 evening. On interrogation, they made disclosure statement about their involvement in kidnapping. Appellant Somvir was arrested pursuant to the disclosure statement made by the other appellants on 05.08.2003. Appellant Somvir was arrested by the police along with the child Bunty from the house of one Sriom S/o Radhey, Village Khatkhat, P.S. Kondli, District Haryana, at the instance of the appellant Sunil Kumar. On completion of formalities of investigation, the appellants were challaned and sent for trial.

3. Learned Additional Sessions Judge charged the appellants for the offences punishable under Section 120B IPC read with Section 364A/120B IPC. The appellants as well as their co-accused pleaded not guilty to the charge and claimed trial.

4. In order to bring home the guilt of the appellants and other co-accused, the prosecution examined 17 witnesses in all. Statements of the accused persons were recorded under Section 313 Cr.P.C. wherein they denied the prosecution version and claimed innocence. In

defence, three witnesses, namely, Hukum Chand, Kishan Pal and Raj Kumar were examined.

5. Learned Additional Sessions Judge, on consideration of the evidence on record, acquitted the co-accused persons Sriom, Santnam and Manoj, but convicted the appellants on charges under Sections 363/365 IPC and sentenced them to undergo RI for the period of three years and also to pay fine of ₹2,500/- each, in default to undergo RI for a period of three months.

6. Feeling aggrieved by the impugned conviction and order on sentence, the appellants have preferred these appeals.

7. Ms. Neelam Grover, Advocate appearing on behalf of the appellant Anil Kumar Sharma and Sunil Kumar Sharma and Sh. Om Dutt Sharma, Advocate appearing for the appellant Somvir at the outset, stated that the appellants admit their guilt and they do not intend to challenge the impugned judgment of conviction of the appellants for the offence under Section 363/365 IPC on merits. The learned counsels however concentrated on the question of quantum of sentence only and they pleaded leniency in the matter. Thus the, only question to be determined in these appeals is whether in the given facts and circumstances of the case and the finding recorded by the learned Trial Judge, the appellants are entitled to any leniency in the matter regarding the sentence awarded to them.

8. It is contended that the appellants at the time of commission of offence were young boys aged between 18 to 20 years and they were not even aware of the gravity and consequences of the act committed by them. Learned counsels appearing on behalf of the appellants submitted that the appellants, but for the instant case, have a clean record and they have not been involved in any criminal case either before or after the incident in question. They, during the pendency of trial and appeal have got married and now they are responsible for supporting their own families. It is also contended that the appellants realize their mistake and they assure that they will not indulge in any criminal activity in future.

9. Awarding punishment in a criminal case is a serious exercise and the court, while awarding the sentence, is required to take into account various factors and create a balance between the interest of the individual and concern for the society. The object of punishment in a criminal case is not only punitive but reformatory, so that the guilty individual is made to realize his mistake and repent for his actions and also to reform himself to become a useful member of the society. Hon'ble Supreme Court in the matter of **Karamjit Singh Vs. State (Delhi Admn.)**, (2001) 9 SCC 161 while dealing with the question of quantum of sentence, inter alia, observed thus:-

“7.....Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realize his fault and is deterred from repeating such acts in future. The

reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighting the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law".

10. In the light of above enunciated principle, on consideration of rival contentions on the question of reduction of sentence as urged by the appellants, I find that this is a case in which the appellants deserve leniency and they deserve a chance to mend their ways and become useful members of the society.

11. As per the nominal rolls of respective appellants, appellants Anil Kumar Sharma and Sunil Kumar Sharma have suffered incarceration for almost two years each whereas appellant Somvir has undergone incarceration for a period of approximately 2½ years. The appellants, at the time of commission of offence, were young boys between 18 to

20 years and during pendency of this case, all of them are stated to have been married and now, they have their immediate families to support and look after. As per the nominal rolls of respective appellants, apart from the instant case, there is no other criminal record of the appellants. They are gainfully employed, as such no useful purpose shall be served by sending them to custody, instead it may prove to be counter-productive. Thus, I take a lenient view in the hope and belief that the appellants shall reform themselves and prove to be useful members of the society.

12. The appeals, so far as quantum of sentence is concerned, are accepted and the sentence of three years imprisonment awarded to the appellants is modified to the period already undergone by them in custody.

13. The appeals are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

OCTOBER 25, 2010
pst