

CRIMINAL APPEAL NO. 41 OF 2013

Vs.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent.

Vs.

Mr. S.R. Rivankar, Public Prosecutor for the Respondents.

Mr. Jasimuddin @ Jasim Alam ... Appellant

Vs.

State

... Respondent

Mr. Dhaval Zaveri, Advocate for the Appellant.

Mr. S.R. Rivankar, Public Prosecutor for the Respondent.

**Coram : SMT. R.P. SONDURBALDOTA &
C.V. BHADANG JJ.**

Date : 22nd November, 2016

P.C:

After the three appeals are substantially argued, Mr. Desai, the learned Senior Counsel for the appellant in Criminal Appeal No. 41/2013 and Advocate Kanekar and Advocate Zaveri, appearing in the other two appeals, make a statement that the appellants restrict their challenge in the present appeals to the sentence awarded to them. Accordingly the submissions on the propriety of the sentences awarded to the appellants are heard.

2. The impugned judgment and order sentences the appellants as under:

"The accused no. 1, 2 and 3 are sentenced to undergo imprisonment for life and to pay fine

of Rs.10,000/- each in default to under simple imprisonment for a period of 6 months in respect of offence punishable under Section 120-B of IPC.

The accused no. 1 and 2 are sentenced to undergo rigorous imprisonment for a term of 6 months for the offences punishable under Section 342 r/w 34 of IPC.

The accused no. 1 and 2 are sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.5,000/- each in default to undergo simple imprisonment for a period of 3 months for the offences punishable under Section 449 r/w 34 of IPC.

The accused no. 1, 2 and 3 are sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.5,000/- each and in default to undergo simple imprisonment for a period of 3 months for the offences punishable under Sections 394 r/w 34 of IPC.

The accused no. 1, 2 and 3 are sentenced to undergo imprisonment for life and fine of Rs.10,000/- each and in default to undergo simple imprisonment for a period of 6 months for the offences punishable under Sections 364-A r/w 34 of IPC.

The accused no. 1, 2 and 3 are sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.25,000/- each and in default to undergo simple imprisonment for a period of 9 months for the offences punishable under Section 8(1A) of the Goa Children's Act, 2003 r/w Section 34 of IPC."

3. Accused No. 1 is arrested on 13.01.2008 and Accused Nos. 2 and 3 were arrested on 14.01.2008. Since the date of arrest till date, they have been in custody, as a consequence of which, as on date they have undergone almost nine years of imprisonment. Perusal of the record shows that there are following extenuating circumstances for consideration of the Court as regards the sentence imposed upon the appellants:

(a) All the three appellants were young i.e. within the age group of 20-22 years, at the time of commission of the offence.

(b) The appellants do not have criminal antecedents.

(c) The appellants come from poor financial background.

(d) The child (who was allegedly kidnapped) was not harmed in any way.

(e) There was no assault on P.W.1. The minor injuries sustained by P.W.1 were on account of being tied with ropes.

(f) The manner in which the crime was committed clearly indicates that the appellants were absolute novice at the crime. They were apparently tempted to acquire easy money.

4. Taking into consideration all the above extenuating circumstances and the fact that the appellants have undergone a substantial portion of the sentence awarded to them, we are of the opinion that they can be given an opportunity to reform themselves by reducing the substantive sentence to that already undergone by them and reducing the amount of fine. Therefore while confirming their conviction for the different offences, we modify the sentence awarded to the appellants in following terms:

*Necessary
correction
carried out in
terms of
order dated
30.11.2016*

(I) The substantive sentence imposed upon the appellants for the offences punishable under Sections 120-B, 342, 449, and 394 of IPC, is reduced to the sentence already undergone by them.

(II) The award of sentence of fine for the offences punishable other than under Section 364-A of IPC and for the offence punishable under Section 8(1A) of the Goa Children's Act, 2003, is set aside.

(III) The fine of Rs.10,000/- imposed for the offence punishable under Section 364-A of IPC, is maintained. The fine imposed for the offence punishable under Section 8(1A) of the Goa Children's Act, 2003, is reduced to Rs.10,000/- .

5. The learned Advocates state that the appellants shall pay the fine within a period of two weeks from today. On

payment of fine, the appellants shall be released forthwith, unless required in any other case.

C.V. BHADANG, J.

R.P. SONDURBALDOTA, J.

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