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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 03, 2016
DECIDED ON : MAY 17, 2016

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CRL.A. 1164/2014

KISHORE KUMAR Appellant
Through : Mr.J.S.Kushwaha, Advocate.

VERSUS

STATE Respondent
Through : Mr.Vinod Diwakar, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 07.08.2014 of learned Additional Sessions Judge in Sessions Case No.21/14 arising out of FIR No.150/2009 registered at Police Station Sultan Puri by which the appellant was held guilty for committing offence under Sections 120B IPC and 368 IPC read with Section 120B IPC. By an order dated 16.08.2014, he was sentenced to undergo Rigorous Imprisonment for four years with fine ₹5,000/- each under the both heads. The sentences were to operate concurrently.

2. By a judgment dated 29.01.2013 in Sessions Case No.452/2010 emanating from FIR No.150/2009 registered at Police Station Sultan Puri (Crime Branch) Bimla, Mukesh, Kartar, Shyam Lal (since expired), Kishore

(the appellant), Anita @ Marwan and Mangal were held guilty for committing various offences. The present appellant Kishore and Anita were convicted under Sections 120-B IPC and Section 368 read with Section 120B IPC. The convicts were sentenced to undergo various prison terms by an order dated 31.01.2013. The convicts challenged the said judgment by filing various appeals. All these appeals were taken up together and disposed of by this Court by a judgment dated 28.04.2014. Appeals filed by all the convicts except Kishore Kumar (the present appellant) were dismissed. The appellant's appeal was allowed and the matter was remanded to the Trial Court with the direction to provide counsel to the appellant through Delhi Legal Services Authority and to give an opportunity to the counsel to cross-examine the prosecutrix on his behalf. The Trial Court was directed to pass fresh orders on merits after cross-examination of the prosecutrix.

3. The Trial Court pursuant to the direction of this Court, vide order dated 28.04.2014, recalled the prosecutrix 'X' (changed name) for cross-examination. Statement of the appellant was recorded under Section 313 Cr.P.C. Upon appreciation of evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment dated 07.08.2014 convicted the appellant for the offences mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been filed.

4. I have heard the learned counsel for the parties and have examined the file. Appellant's contention is that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellant never hatched conspiracy with co-convicts to kidnap the prosecutrix or to wrongfully confine her. It has come on record that the victim was never

maltreated or beaten during her stay with the appellant. Contrary to that, she was admitted in a school to get education. Counsel further urged that the appellant was allured to take the child in adoption by co-convicts Mukesh and Kartar. When they did not complete the legal formalities for adoption, he handed over child's custody as he was unable to pay the money demanded by them. The victim was never concealed or confined by him. Learned Additional Public Prosecutor urged that the appellant was hand-in-glove with the co-convicts and was responsible for committing offences under Section 368 IPC read with Section 120-B IPC.

5. As discussed above, Bimla, Mukesh, Kartar, Anita and Mangal were convicted by the Trial Court and their conviction was upheld by this Court vide order dated 28.04.2014. This Court held as under:-

“11.....The act and conduct of the appellant Bimla in taking the child to the house of Mukesh and Kartar, making her wear a saaree, boarding the car of Mukesh and Kartar alongwith child and thereafter getting down from the car on the pretext of fetching the clothes of the child clearly shows that she had kidnapped the child who admittedly was a minor for the purpose of selling or letting her to hire with intent that she would be employed or used for such a purpose or knowing it to be likely that she would be employed or used for any unlawful purpose. Her conduct in leaving the child with the appellants Mukesh and Kartar also proves that she had either sold or let the child to hire with the aforesaid intent or knowledge.

12. The conduct of the appellants Mukesh and Kartar in admitting the child in their house and then taking her in their car in the company of the appellant Bimla is a clear proof that they were party to the criminal conspiracy pursuant to which the child was kidnapped for the purpose of being sold or let to hire with intent that she would be

employed or used for an unlawful purpose or knowing it to be likely that she would be employed or used for such a purpose. The appellants Bimla, Kartar and Mukesh, therefore, have rightly been convicted u/s 120B of IPC r/w Section 372 thereof. The deposition of the prosecutrix would show that the appellants Mukesh and Kartar left her with Anita and Kishore in Manesar from where she was taken to village called Girwas. There is no explanation from the appellants Mukesh and Kartar as to why they had taken the child to Manesar in their car and then left her with the appellants Anita and Kishore. The intention and knowledge being state of mind cannot be proved by way of direct evidence and can only be inferred from the attending facts and circumstances. Instead of giving any explanation for taking the child to Manesar and leaving her with Anita and Kishore, the appellants Mukesh and Kartar chose to altogether deny having taken the child with them. In the absence of any explanation from them and considering the facts and circumstances of the case, it may safely be inferred that they had either sold or let the child to hire to the appellants Anita and Kishore with intent that she would be employed or used for an unlawful purpose or knowing it to be likely that she would be employed or used for an unlawful purpose or knowing it to be likely that she would be employed or used for any such purpose by Anita and Kishore. Therefore, they also committed substantive offence punishable u/s 372 of IPC.”

6. The appellant was similarly convicted under Section 120B and 368 IPC read with Section 120B IPC by the Trial Court. However, this Court did not sustain the conviction as reasonable opportunity to cross-examine the prosecutrix was not afforded to him. The Trial Court record reveals that the prosecutrix when recalled for cross-examination admitted her stay with the appellant and his wife Anita for a total period of about 8/9 months. She admitted that the appellant had admitted her in a school over

there. She volunteered to add that a girl used to accompany her to the school and by the passage of time, she became friendly with her. She admitted that Kishore and his wife had never beaten or maltreated her. She expressed ignorance if Kishore (the appellant) and Anita willing to adopt a child were approached by Mukesh and Kartar to adopt Usha's daughter, a widow. She disclosed that Shyam Lal (since expired) was not known to her. She was not aware if under pressure of Mukesh and Kartar, Kishore (the appellant) and Anita had left her at his (Shyam Lal's) house. She denied that the statement given by her in the cross-examination was tutored.

7. On scanning the testimony of the victim, it transpires that she was undisputedly in the company of the appellant and his wife Anita for about 8/9 months. At no stage, the appellant or his wife bothered to inform victim's real parents. They did not take the child in adoption. They did not move any authority to complete the legal formalities to take the child in adoption. They did not contact Usha to whom the child allegedly belonged. The child aged 8/9 years was complete stranger to the appellant and his wife Anita. It is highly unbelievable that they without making proper verification about the victim would allow her to remain at their house. It has not been explained as to why the matter was not reported to the police when Mukesh and Kartar did not complete the adoption formalities, as alleged. The appellant did not offer any reason as to why the custody of the child was handed over to Shyam Lal.

8. It is relevant to note that when the statement of the prosecutrix was recorded previously by the Trial Court, no such plea was taken by him. He rather categorically denied the incriminating circumstances proved against him. He did not state if the child had remained with them for about

eight or nine months or they had taken her in adoption in good faith. It appears that after remand of the case by this Court, the appellant has concocted a false defence to wriggle out of the conviction. It has come on record that Mukesh and Kartar were acquainted with the appellant. It was his bounded duty to ascertain if victim's so-called mother Usha was agreeable to give her in adoption. No precautions, whatsoever, were taken by the appellant in this regard. The defence deserves outright rejection. On the same set of evidence, his wife Anita has been convicted and the appellant's case is on the same footing. The appellant was a government servant and must be aware about the procedure while taking a child in adoption. He did not examine any witness from the locality in defence to prove under what circumstances, the child was brought and kept in the house.

9. The Trial Court has discussed all the relevant aspects and the findings based on fair appraisal of evidence require no intervention.

10. The appeal lacks merits and is dismissed.

11. Trial Court record be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

MAY 17, 2016/sa