

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 573 OF 2001

Naresh Rameshlal Aseja,
Age : 21 years, Occu. Business,
R/o Zulelal Society,
Sakri Road, Dhule

**APPELLANT/
ORIG. ACCUSED NO.1**

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Bharat R. Waramaa, Advocate for the Appellant
Mr. P.N. Kutti, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 13th JULY, 2017

ORAL JUDGMENT :

Heard the learned counsel for the appellant and
the learned A.P.P.

2. The appellant (original accused No.1) has
challenged his conviction and sentence for the offence
punishable under Section 363 of the Indian Penal Code
("IPC", for short), recorded by the learned 3rd
Additional Sessions Judge, Dhule in Sessions Case No. 82
of 2000. He was sentenced to suffer rigorous
imprisonment for three years and to pay a fine of
Rs.1000/-, in default to suffer rigorous imprisonment

for six months. He has been acquitted of the offences punishable under Sections 364A and 384 of the IPC.

3. The learned counsel for the appellant submits that at the time when the offence was committed i.e. on 10th March, 2000, the appellant/accused was 21 years of age. He submits that the period of more than 16 years has been elapsed after the date of the offence. The appellant is now doing some business which he succeeded from his father. The relations between the appellant and the family members of the victim - Dipesh also have become cordial. The appellant is not a previous convict. In the circumstances, he submits that the appellant may be extended the benefit of probation. On instructions, he submits that the appellant has given up all the grounds of objections against his conviction for the above mentioned offence.

4. The learned A.P.P. opposed the prayer of the appellant for grant of the benefit of probation considering the serious nature of the offence.

5. As submitted by the learned counsel for the appellant, the appellant does not dispute his conviction for the offence punishable under Section 363 of the IPC,

which is punishable with imprisonment for either a term which may extend to seven years and fine. The accused has been acquitted of the offences punishable under Sections 364A and 384 of the IPC. Thus, it is not established that the offence of kidnapping was committed by the appellant for ransom or for extortion.

6. It may be noted that the appellant has been convicted for a serious offence of kidnapping a child, aged of six years. Though the learned Trial Judge has not extended the benefit of probation to the appellant, a lenient view has been taken and the sentence of imprisonment of three years has been passed against the appellant. Considering the serious nature of the offence, I am also not inclined to extend the benefit of probation to the appellant. However, since the period of more than sixteen years has been elapsed after the date of the incident, the appellant is doing some business, he is not a person of criminal antecedents and the relations between the family of the victim boy and that of the appellant have become cordial, I am of the view that, to meet the ends of justice, the appellant will have to be sentenced for the period which he has already undergone in connection with this offence. The

appellant/accused was in jail from 11th March, 2000 to 3rd May, 2000. The appellant/accused has already deposited the fine amount before the Trial Court. In the circumstances, I pass the following order:-

O R D E R

- (i) The appeal is partly allowed.
- (ii) The sentence of imprisonment passed against the appellant vide the impugned judgment and order, is modified and reduced to the period that he has already undergone i.e. from 11th March, 2000 to 3rd May, 2000.
- (iii) The sentence of payment of fine passed against the appellant is maintained as it is.
- (iv) Rest of the part of the impugned judgment and order is maintained as it is.
- (v) Bail bonds of the appellant are cancelled. He is set at liberty.
- (vi) The appeal is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE