

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1101 OF 2018**

Aditya Sham Chaturvedi,
Age 20 years, Occ. : Nil,
residing at Post Teganrahi,
Town Bairiya, Dist. Baliya
(State – U.P.)
(presently at Yerwada Jail)

... Appellant

Vs.

State of Maharashtra
through the Mundhwa Police Station,
Pune.

... Respondent

Mr. Satyavrat Joshi a/w Mr. Nitesh J. Mohite and Mr. Rohit Shevate for the Appellant.

Smt. Rutuja Ambekar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

RESERVED ON : 16th OCTOBER 2020.

PRONOUNCED ON : 4th NOVEMBER 2020.

JUDGMENT :-

. The appellant has impugned Judgment and Order dated 30.06.2018 passed in Sessions Case No. 198 of 2014, by the learned Additional Sessions Judge, Pune, thereby convicting him under Sections 363 and 365 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years for each of the offences and to pay a total fine of Rs.2,000/-, in default of payment of fine to further suffer simple

imprisonment for one month on each count. The Trial Court has directed that, the sentences shall run concurrently.

2. Heard Mr. Joshi, learned counsel for the appellant and Smt. Ambekar, learned A.P.P. for the respondent-State. Perused entire record.

3. The prosecution case in brief is that, on 06.01.2014, at about 3.30 to 3.45 p.m., Mr. Azad Gulam Mohd. Chaudhari (PW-1) along with his friend Mr. Tushar Jadhav (PW-7) was waiting for a Tempo, opposite KRB Company, in front of Gurudatta Engineers situated on Mundhwa-Manjri Road, to carry material required for fabrication business. At that time, Mr. Azad Chaudhari (PW-1) and Mr. Tushar Jadhav (PW-7) noticed two boys on motorcycle, which stopped at a distance of about 10 feet from them. The said boys were wearing helmet and had covered their faces with handkerchief and they were also wearing hand-gloves. White paper was pasted by cello tape on the number plate of the motorcycle. Mr. Azad Chaudhari (PW-1) and Mr. Tushar Jadhav (PW-7) therefore got suspicious about the said two boys. At about 4.00 p.m., a white color school van came from Mundhwa side. Three children of 5-6 years of age alighted from the said van. The said children were proceeding to their house. The two boys who were on the motorcycle started their vehicle and followed the said children. PW-1 and PW-7 got more suspicious about the movements of the boys on the motorcycle and therefore PW-7 started his motorcycle and they followed the motorcycle of the said two

boys. PW-1 and PW-7 saw that, the pillion rider of the said motorcycle forcibly caught one boy out of the said three children, lifted him and kept him on the motorcycle in between the motorcycle rider and pillion rider. One girl out of the said three children started shouting as "Sumit, Sumit". The boys on the motorcycle started proceeding with speed. PW-1 and PW-7 therefore chased the motorcycle of the said two boys and tried to stop it. However, the rider of the said motorcycle did not stop and therefore PW-7 gave a dash of his motorcycle to the motorcycle of the said boys. Due to the dash, the motorcycle of the said boys along with the said small boy fell down. PW-1 apprehended the motorcycle rider. The Pillion rider tried to run away, however PW-7 apprehended him. In the meantime, people present nearby gathered there. Upon enquiry by the people, the motorcycle rider disclosed his name as Ashish Shukla (Juvenile in conflict with law) and the appellant as Aditya Chaturvedi. In the meantime witnessing the incident of abduction of a small boy by two motorcycle riders, Advocate Mr. Sanjay Pingale (PW-5) who was residing near the spot of incident, gave a phone call to the Police. After receipt of phone call the police personnel rushed to the scene of offence and accosted the appellant and co-accused (Juvenile in conflict with law). Meanwhile Ms. Roshani Prasad (PW-3) i.e. the real sister of Sumit Prasad (PW-2) along with their father (PW-6) came at the spot. PW-6 and PW-3 confirmed the identity of Sumit Prasad (PW-2) and Sumit was given in the

custody of his father (PW-6). Police effected spot cum seizure panchanama (Exh.25) at the scene of offence itself and a Hero Honda motorcycle bearing No.MH-12-KG-5767 along with the helmets, hand-gloves and other articles were seized by the police.

4. After completion of investigation, police submitted charge-sheet against the appellant in the Court of Judicial Magistrate, First Class, Cantonment Court, Pune. The co-accused was a juvenile in conflict with law and therefore his case was separated. As the present case was exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the present case, as contemplated under Section 209 of Cr.P.C., to the Court of Sessions.

The Trial Court framed charge below Exh.-8, under Sections 363, 364-A and 365 read with Section 34 of the Indian Penal Code. The contents of the charge was read over and explained to the appellant in vernacular, to which he pleaded not guilty and claimed to be tried. The defence as can be gathered from the line of cross-examination of prosecution witnesses and the statement recorded under Section 313 of Cr.P.C. of appellant, was of total denial and false implication.

5. In support of its case and to prove charge against the appellant, the prosecution examined in all 9 witnesses namely, Mr.Azad Gulab Mohd. Chaudhari (PW-1), the informant, an eye witness; Master Sumit Prasad

(PW-2), the victim in the present crime, who was aged about 5 years on the date of incident; Ms. Roshani Prasad (PW-3), the sister of PW-2 and an eye witness; Mr.Sarjad Irshat Khan (PW-4), panch witness to the spot cum seizure panchanama (Exh.25); Mr. Sanjay Pingale, Advocate (PW-5) an eye witness, who gave a phone call to the police; Mr. Parasnath Prasad (PW-6), father of victim Sumit Prasad (PW-2) and Ms. Roshani Prasad (PW-3); Mr. Tushar N. Jadhav (PW-7), an eye witness who chased the appellant from his own two wheeler and apprehended him; Mr. Pritam G. Shende (PW-8) owner of Pritam Medical and General Store, Mundhwa, Pune, from where the appellant purchased surgical hand-gloves and adhesive tape and Mr. Vishwanath Ghanvat (PW-9), Senior Police Inspector then attached to Mundhwa Police Station, the Investigating Officer of the present crime.

The Trial Court after recording evidence and hearing learned counsel for the respective parties, convicted appellant under Sections 363 and 365 read with Section 34 and acquitted him from the offence punishable under Section 364-A read with Section 34 of the Indian Penal Code, by the impugned Judgment and Order dated 30.06.2018.

6. Mr. Joshi, learned counsel for the appellant submitted that, Section 363 of the Indian Penal Code is not applicable to the present crime as the appellant did not kidnap the victim from the lawful guardianship of his parents. He further submitted that, Section 365 of the Indian Penal Code is

not at all attracted to the present crime in view of evidence of the father (PW-6) of victim, as the prosecution has failed to establish the fact that, the alleged abduction of victim by the appellant was with intent to cause that person to be secretly and wrongfully confined. He submitted that, the appellant has been acquitted from section 364-A and the same analogy is applicable to section 365 of I.P.C. also. In support of his contention he relied on a decision of the learned Single Judge of this Court in the case of *Salim Abbas Chaudhari Vs. State of Maharashtra* reported in *2018 DGLS (Bom.) : 2018 All M.R.(Cri.) 4634*. He further submitted that, the prosecution has failed to prove the intention of the appellant to confine victim for ransom. He therefore prayed that, the appellant may be acquitted from all the charges levelled against him.

While canvassing the point of quantum of sentence imposed upon the appellant, Mr. Joshi submitted that, the appellant was a young boy aged about 20 years on the date of incident and has undergone more than two and half years of imprisonment till today. That, the appellant has learnt a lesson for his life and leniency may be shown to him by reducing the sentence to the extent of period already undergone in incarceration. To buttress his argument, he relied on para No.97 of the decision of the Hon'ble Supreme Court in the case of *Alister Anthony Pereira Vs. State of Maharashtra* reported in *(2012) 2*

Supreme Court Cases 648. He therefore, prayed that the present Appeal may be allowed.

7. Smt. Ambekar, learned A.PP pointed out relevant evidence against the appellant from the testimonies of witnesses. She submitted that, the appellant in a pre-planned manner committed present crime in broad daylight. She submitted that, there is ocular evidence available on record showing clear complicity of appellant in the present crime and therefore no leniency be shown to the appellant. She therefore submitted that, the present appeal may be dismissed.

8. As noted earlier, Sumit Prasad (PW-2) is the victim in the present crime. Mr. Azad Chaudhari (PW-1), Ms.Roshni Prasad (PW-3), Mr.Sanjay Pingale (PW-5) and Mr. Tushar Jadhav (PW-7) are the eye witnesses, out of which Mr. Azad Chaudhari (PW-1) and Mr. Tushar Jadhav (PW-7) are the star witnesses.

9. Mr. Azad Choudhari (PW-1) in his deposition has stated that, Mr. Tushar Jadhav (PW-7) was his friend, who was in the fabrication business. On 06.01.2014, at about 3.30 p.m., he and Mr. Tushar Jadhav were waiting for a Tempo opposite KRB Company in front of Gurudatta Engineers on Mundhwa-Manjri road, to carry fabrication material. At that time, they noticed two boys on motorcycle which stopped at a distance of about 10 feet from them. Both the said boys were wearing helmet on their head and hand-gloves in their

hands. They had covered their face by handkerchiefs. The number-plate of the said motorcycle was covered by pasting white paper with cello tape. PW-1 and PW-7 therefore got suspicious about the said two boys. At about 4.00 p.m. a white colour school van came from Mundhwa side. Three, 5 to 6 years children alighted from the van and it left the said place. The said three children were going to their house. Then, the said two boys started their motorcycle and proceeded behind the said children. PW-1 and PW-7 therefore got more suspicious about the boys on the motorcycle. They therefore decided to follow the motorcycle of the said two boys. They saw that, the pillion rider of the said motorcycle forcibly caught one boy out of the said three children and placed him on the motorcycle in between the motorcycle rider and pillion rider. One girl out of the three children started shouting as, "Sumit, Sumit". The boys on the said motorcycle proceeded ahead along with the small boy and therefore PW-1 and PW-7 chased the boys on the said motorcycle. The motorcycle rider however was not ready to stop his motorcycle and therefore Mr. Tushwar Jadhav (PW-7) gave a dash of his motorcycle to the said motorcycle from which the said two boys along with the said small boy were proceeding. Due to the dash of their motorcycle, the motorcycle of the said two boys along with the small boy fell down. PW-1 thereafter apprehended the motorcycle rider. The pillion rider of the said motorcycle tried to run away from the spot, however Mr. Tushar Jadhav (PW-7) apprehended him. In the

meanwhile, people from nearby gathered at the spot. Mr. Pingale gave a phone call to the police and police rushed to the spot of incident. PW-1 and PW-7 handed over the motorcycle rider and pillion rider to the police. The father (PW-6) of the said small boy came there and confirmed his identity and they gave the said small boy in his custody. The motorcycle rider disclosed his name as Ashish Shukla (Juvenile in conflict with law). The pillion rider disclosed his name as Aditya Chaturvedi (appellant). PW-1 identified the appellant in the Court as the same accused who was a pillion rider on the said motorcycle. The name of the said small five years boy was Sumit Prasad (PW-2), name of his sister (PW-3) was Ms. Roshani Prasad and the name of their father (PW-6) was Mr. Parasnath Prasad. That, the appellant on enquiry disclosed that he along with the co-accused had decided to kidnap Master Sumit (PW-2) for a ransom of Rs. 10 lakhs. He thereafter went to Mundhwa Police Station and lodged the present F.I.R. (Exh.20) against the appellant. He identified the contents of the F.I.R. and his signature thereon. He also identified the helmet (Article -A), the black coloured Jacket (Article-B) and the white handkerchief (Article- C) worn by the appellant. PW-1 has also identified hand-gloves (Article-D) and the white colour paper (Article-E) pasted on the number-plate of motorcycle of the appellant.

10. Mr. Tushar Jadhav (PW-7) who was throughout with PW-1 and who apprehended the appellant herein has deposed in similar manner as that

of PW-1. PW-7 has corroborated the version of PW-1 in its entirety. PW-7 has also identified the appellant in Court as the same person who abducted Master Sumit on the date and time of incident.

11. Mr. Sanjay E. Pingale (PW-5), an Advocate by profession, in his deposition has stated that, on 06.01.2014 he was at his house. The incident occurred at about 4.00 p.m. on 06.01.2014. He was at the door of his house at that time. He saw two boys coming near his house on a motorcycle and picking up one small boy who was going by the said road. The pillion rider picked up the said small boy and after abducting him, the motorcycle proceeded with speed. That, along with the said small boy there was a small girl who started weeping. The other motorcycle riders chased the earlier motorcycle and apprehended them. He then made a phone call to the Police Inspector of Mundhwa Police Station. Police came on the said spot of incident and took the said two boys who were on the motorcycle in their custody. A panchanama was drawn at the spot of incident. He had seen the motorcycle rider and pillion rider. PW-5 has identified appellant in the Court, as a pillion rider on the said motorcycle.

12. Mr. Sumit Prasad (PW-2) is the victim in the present crime. He has deposed that, in January 2014, he was studying in upper KG in Jack & Jill English Medium School. The timing of his school was from 7.30 a.m. to 2.30 p.m. He used to return to his house from school along with his sister

(PW-3) by the said school van. The driver of the school van used to leave them at Sonainagar on the main road and from there they used to return to their house by walk. On 06.01.2014, the driver of the school van left PW-2 and PW-3 on the main road of Sonainagar and he was going to his house. At that time, two persons came from his back side by a bike and after taking 'U' turn, the pillion rider caught him and kept on the bike. His sister shouted and therefore two persons who were chit chatting on a bike nearby started chasing his bike. The other two persons who were chasing his bike gave a dash to it. Both the bikes fell down and PW-2 tried to run away. Two to three other persons apprehended pillion rider and the rider of the said bike. Many people gathered at the spot. Two Police Constables also came on the spot of incident and apprehended the said two boys. Police removed helmets, handkerchief, hand-gloves from the person of the said two boys. He identified the appellant before the Court as the same pillion rider. PW-2 was knowing the appellant as Adityabhaiya as he was residing near his house. The other accused who was riding the bike was residing on the back side of his house and his name was Ashishbhaiya. Then his sister (PW-3) and father (PW-6) came at the spot. PW-2 has identified the appellant in the Court as the same person.

Ms. Roshani P. Prasad (PW-3) is the real sister of PW-2. She has fully corroborated version of PW-2 till the point of his abduction and her shouting. She has further deposed that, she returned home and informed the

said fact to her father and mother. She then along with her father came at the spot of incident where many persons had gathered. She noticed the said pillion rider and identified him as Adityabhaiya who was residing near her house. She has identified the appellant in the Court as the same accused person.

Shri Parasnath Prasad (PW-6) is the father of Sumit Prasad (PW-2) and Ms. Roshani Prasad (PW-3). In his deposition, he has corroborated version of PW-2 and PW-3 in its entirety and has also identified the appellant as the person who was apprehended by the other witnesses. He has deposed that, for a ransom of Rs.10 lakhs the appellant kidnapped his son. In his cross-examination an admission has been brought on record by the defence that, in his presence the appellant revealed that the appellant was to demand Rs.10 lakhs for releasing his son.

13. It is to be noted here that, nothing beneficial to the appellant has been elicited from the extensive cross-examination of all these witnesses. The evidence of PW-1, PW-5 and PW-7 is fully reliable and trustworthy. PW-1, PW-5 and PW-7 are independent eye witnesses and had no grudge or animosity against the appellant to falsely implicate him in the present crime. The act of appellant in lifting Master Sumit (PW-2) from a public road has been witnessed by PW-1, PW-3, PW-5 and PW-7. The PW-2 was aged about five years on the date of alleged incident and PW-6 i.e. the father of Sumit was

his lawful guardian. The appellant along with the co-accused had abducted Master Sumit from a busy road with intent to demand ransom of Rs.10 lakhs from his father and was fleeing from the said spot with intent to wrongfully confine him. The fact of intention of the appellant of demanding ransom has been revealed during the course of investigation and it is the motive propounded by the prosecution against the appellant in committing the present crime.

The *mens rea* or criminal intent in a crime is generally implied and has to be discerned from the facts and evidence on record of each case. If there would not have been any motive for the appellant i.e. to abduct and/or kidnap Master Sumit, then there would not have been any reason for him to commit the present crime. It is because of the genuine suspicion raised by PW-1 and PW-7 thereby chasing the appellant, has averted aggravation of the offence.

14. A plain reading of Sections 364 and 365 of Indian Penal Code makes it abundantly clear that, the language used by the Legislature therein, makes the applicability of the said two sections distinct and in different spheres and therefore the contention of the learned counsel for the appellant that the analogy of Section 364-A is also applicable to Section 365 of Indian Penal Code can not be accepted. The contention of the learned counsel for the appellant that, Section 363 of the Indian Penal Code is not applicable to

the present crime, is recorded only for its rejection in view of the evidence available on record, facts of the present case and the observation made by this Court in sub-para of Para No.13 above.

The evidence of eye witnesses in the present case as briefly enumerated herein above would clearly disclose commission of offence under Sections 363 and 365 of the Indian Penal Code by the appellant. The decision relied upon by the learned counsel for the appellant in the case of *Salim Abbas Chaudhari (supra)* has no application in the present case as it materially differs from the facts mentioned therein. The Trial Court has therefore rightly convicted the appellant under those sections.

15. This leads me to deal with the point of quantum of sentence canvassed by the learned counsel for the appellant. The Hon'ble Supreme Court in the case of *Alister Anthony Pereira (supra)* in para Nos.84 and 85 has held as under:

84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in

mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

16. Both the Sections i.e. 363 and 365 of I.P.C. prescribe punishment with imprisonment of either description for a term which may extent to seven years and shall also with fine. Though the appellant was a young boy aged about 20 years on the date of commission of offence, it can not be lost sight that, he has committed the present crime in a pre-planned manner. He abducted a minor aged about five years from a busy road. The preparation which he had made for commission of the offence can clearly be discerned from the depositions of PW-1 and PW-7. After taking into consideration the aggravating and mitigating circumstances, the sentence imposed upon the appellant by the Trial Court appears to be just, right and proper. It is to be noted here that, the appellant has not been awarded with maximum sentence prescribed under both the said sections, considering his age and other mitigating circumstances.

17. After taking into consideration the entire evidence available on record and perusing the impugned Judgment and Order, this Court finds that there are no merits in the Appeal.

Appeal is accordingly dismissed.

18. This Judgment will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

(A.S. GADKARI, J.)

Digitally signed
by Omkar S.
Kumbhakarn
Date:
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Omkar S.
Kumbhakarn