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**Dharam Pal Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/703159

**Court** : Delhi

**Decided On :** Aug-18-2000

**Reported in** : 2000CriLJ5060; 2000(55)DRJ85A

**Judge** : Dalveer Bhandari, J.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 368

**Appeal No.** : Crl. Appeal No. 323 of 1977

**Appellant** : Dharam Pal

**Respondent** : State

**Advocate for Def.** : Mr. Akshay Bipin, Adv.

**Advocate for Pet/Ap.** : Mr. P.K. Bhardwaj, Adv

**Judgement** :
ORDER

**Dalveer Bhandari, J.**

1. The appellant is aggrieved by the judgment of the Additional Sessions Judge dated 19.9.1977 by which he was convicted under section 368 and was sentenced to 1-1/2 year's of imprisonment. Brief facts necessary to dispose of the appeal are recapitulated as under :

2. According to the prosecution on 21.2.1975, Brij Mohan of Amod village Along with others, conspired and kidnapped Manto a boy of 2-1/2 years son of Rajinder Prashad from his lawful guardianship with a view to extract Rs. 10,000/- from Rajinder Prashad father of the boy. The actual kidnapping was carried out by Birju and Kailash. Birju and Kailash are absconding. Manto the kidnapped boy, confined to Rori village from 21.2.1975 to 23.2.1975, was recovered from the house of Bhagwan Devi. She is the mother in law of appellant Dharampal's brother. The prosecution examined 15 witnesses in support of the prosecution case. I have carefully examined the evidence on record and in my considered opinion no interference is called for. Counsel for the appellant prayed that the appellant's sentence be reduced to the period already undergone.

3. Reliance has been placed on the judgment of the Supreme Court in the case of Sarup Chand v. State of Punjab; reported in 1987(1) Cri 818. In this case the appellant was convicted by the trial court under Section 161 IPC and under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The conviction was upheld by the High Court. In appeal, Hon'ble the Supreme Court while maintaining the conviction had reduced the sentence to the period already undergone on the ground that six years have passed from the date of the incident and this is the first time the appellant had committed an offence.

4. In the instant case, the appellant has remained in custody for some time and 25 years have lapsed since the date of the incidence. It is further stated that the appellant has not been involved in other criminal case, thereforee, according to the learned amices curiae following the ratio of aforesaid judgment while maintaining the conviction of the appellant in this case, the sentence be reduced to the period already undergone.

5. The learned amices curiae also relied on the judgment of this Court in the judgment of Inder Parkash Shingal v. State; (1989) 38 DLT (SN) 5. In this case also the accused appellant was convicted under Section 161 Indian Penal Code and Section 5 (1) (d) & 5(2) of the Prevention of Corruption Act, 1947. The Court while maintaining the conviction reduced the sentence of the imprisonment of appellant to the period already undergone on the ground that the appellant has

faced the agony of trial for about 18 years now.

6. The learned amices curiae placed reliance on the judgment. In the case of B.G. Goswami v. Delhi Administration; decided by the Supreme Court reported in 1973 SCC (Crl.) 796. The Court observed as under :

'Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilised societies, however, reformatory aspect is being, given somewhat greater importance. Too lenient as well as too harsh sentence both loss their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already/ undergone but increase the sentence of fine from Rs.200/- to Rs.400/-. Period of impris- onment in case of default will remain the same.'

7. This case has been followed in a number of subsequent judgments by the Supreme Court and various other courts. In Ramesh Kumar Gupta Vs . State of M.P. : 1995 CriLJ3656 , while relying on the judgment of B.G. Goswami v. Delhi Administration (supra), the sentence of imprisonment was reduced to the period already undergone, in a case where the accused was convicted under Section 161

of the Indian Penal Code.

8. In the instant case, the incident had taken place in 1975. The basic facts regarding the delay are quite akin to the facts of aforesaid cases. The appellant had undergone some part of the sentence and faced the trauma of criminal proceedings and prosecution for 25 years.

9. On careful analysis of the evidence on record leads to the conclusion that the appellant, Dharampal is clearly guilty for the offence under sections 368 IPC. The learned ASJ has rightly convicted the appellant under section 368 IPC. No interference is called for as far as conviction of the appellant is concerned. However, the appellant has been facing trial and prosecution for more than 25 years. He has already under gone part of the sentence, thereforee, on consideration of all the relevant facts and circumstances of this case, in my considered opinion the ends of justice shall be met by upholding the conviction of the appellant. However, the sentence of imprisonment of the appellant, Dharampal is reduced to the period already undergone.

10. Consequently, the appeal is partly allowed and disposed of.

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