

Gopal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-21-1975

Reported in : 1975(8)WLN994

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Criminal Appeal No. 703 of 1671

Appellant : Gopal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

M.L. Shrimal, J.

1. This appeal has been directed against the judgment dated July 28, 1971 of the learned Additional Sessions Judge, Tonk whereby he convicted the accused appellant Gopal under Section 363 I.P.C., and sentenced him to one months simple imprisonment and a fine of Rs. 100/-, in default of the payment of which to undergo imprisonment for a further period of two weeks.

2. The prosecution story as disclosed at the trial is that on the date of the occurrence Rameshwar, a boy of about ten years age was living with Ridheyshyam, his maternal uncles who was Head-Master of the School at

Chhang. On October 20, 1967 Gopal accused went to Radhey Shyam and requested him to send Rameshwar with him to be taken to Deoli to attend a feast. He further represented that Rameshwar's father had asked the former to fetch the boy and had paid Rs. 2/- bus-fare of the child. Believing this representation to be true Radheyshyam asked Rameshwar to accompany the accused appellant Gopal. Later on it was revealed that the accused appellant Gopal had removed the boy from the guardianship of his maternal-uncle under a false pretext. The boy was taken to the village Deoli where some beating was given to him by the accused and his relatives. The former was beaten and asked to confess his guilt regarding the theft which is alleged to have been committed at the house of Radheyshyam, and ultimately he was made to sign on a blank paper. A first information report of this occurrence was filed at the Police Station Deoli on October 24, 1967, and the Police after usual investigation submitted a challan against the accused-appellant under Section 330 and 363 Indian Penal Code in the Court of Additional Munsif Magistrate No 2, The learned Magistrate after taking proceedings under Section 207 Cr. PC committed the accused, to the Court of Additional Session Judge, Tonk to stand his trial under Sections 330 and 363 I.P.C. The accused pleaded not guilty to the charge.

3. The prosecution examined eight witnesses in support of their case out of whom PW 1 Rameshwar is the kidnapped boy, P.W 2 Gulabchand, P W 3 Mallirhm and P.W. 4 Radheshyam are his father, grand-father and maternal uncle respectively P.W. 5 Laduram is the peon of the school, and P.W. 8 Dhanraj is the Investigating Officer of this case. The accused-appellant denied his complicity in the crime. He examined five witnesses in his defence.

4. The learned Judge found the defence unreliable and placing reliance on the statements of P.W. 1 Rameshwar PW. 2 Gulabchand, P.W. 4 Radheyshyam and P.W. 5 Laduram convicted the accused appellant under Section 363 I.P.C. and sentenced him as mentioned above. However, he acquitted the accused appellant of the rest of the charge.

5. Being aggrieved of his conviction and sentence the accused appellant has filed this appeal.

6. It is not necessary for me to consider the prosecution evidence in detail and all the circumstances brought forth on the record by the prosecution to establish the guilt against the accused. Looking to the over whelming evidence on the record the earned Counsel appearing on behalf of the accused has not challenged the validity of the conviction. However, I have looked into the record and am satisfied that there is nothing on the basis of which it can be said that the trial court has committed an error of fact and law in convicting the accused-appellant under Section 363 I.P.C.

7. The only point which has been urged before me on behalf of the appellant is regarding the sentence awarded by the trial court. The earned Counsel urged that since the occurrence which led to the conviction of the appellant is of 1967. Nearly period of 8 years has elapsed between the date of the occurrence and hearing of the appeal. The accused has taken up a regular business and is leading the life of a respectable citizen. It will not be in the interest of justice to send him to suffer imprisonment for a short period of one month after the lapse of eight years. He is likely to be placed in the company of depraved characters of the society in which is unlikely to have a Deterrent reformatory effect on him. It is true that the lapse of a period between the date of the commencement of the trial and hearing of an appeal is a factor which in the context of a particular case may in conjunction with other circumstances be considered as a relevant factor for reduction of the sentence or extending the benefit of the provisions of the Probation of Offenders Act. Lasting of the criminal proceedings for a period of nearly eight years causes not only mental worry but it also means expenses apparent from the attendance in court. The prolonged uncertainty of the result of the case does obstruct the continuity of normal life. The object of criminal law is more to inform the offender than to punish him. Taking a conspectus of the circumstances of the case, the nature of the offence and the short term of imprisonment awarded to the accused, I consider it proper to give him benefit of Section 4 of the Probation of Offenders Act. On behalf of the respondent it was not controverted that this Court cannot make an order under this Act on the existing material on the record, without remitting the case to the trial court and without seeking any further information.

8. Accordingly, I affirm the conviction of the accused-appellant Gopal under Section 363 I.P.C., but set aside the sentence awarded by the trial in court and direct that he be released on entering into a bond with one surety in the sum of Rs. 2000/ to appear in the Court of Additional Sessions Judge whenever called upon to do so by the learned Additional Sessions Judge Tonk within a period of one year and during that period to keep the peace, and be of good behaviour. The Additional Sessions Judge, Tonk is directed to take necessary bond from the accused-appellant Gopa and the necessary surety bend from the sure to his satisfaction. The appellant's bail bond will ensure till these direction carried out after which they will be deemed to be cancelled. The learned Counsel prays for one month's time to submit the necessary bonds and he further undertakes to produce the accused before the trial court failing which the accused-appellant Gopal will undergo the sentence awarded by the trial court.

9. With the modification in the term of sentence the appeal stands dismissed.

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