

Khalil Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-27-1988

Reported in : 1988(1)WLN710

Judge : Mahendra Bhushan Sharma and; Panna Chand Jain, JJ.

Appeal No. : D.B. Cr. Misc. Second Bail Application No. 39 of 1988

Appellant : Khalil

Respondent : State of Rajasthan

Judgement :

Mahendra Bhushan Sharma, J.

1. The matter has come up for disposal of the bail application, but we are of the opinion that as Mr. Dhankar, learned Counsel for the accused-appellant has not very seriously challenged the conviction of the accused-appellant on merits under Section 386 IPC and rightly so and has submitted that the accused has already undergone more than five years' imprisonment and that will meet the ends of justice.

2. One Smt. Shakuntala Devi lodged on April 17, 1981 in Police Station, Shastri Nagar, Jaipur that her son Ashok, about 9 years has not returned since after noon of December 10, 1980. He (Ashok) had gone to purchase Patang at Ramnagar

Circle. A report was lodged by the Smt. Shankuntala about the missing of her son Ashok in Police Station, Shastri Nagar, Jaipur on December 10, 1980 itself. A search was made for the missing boy and on December 22, 1980 a letter demanding a ransom of Rs. 20,000/- was received. That letter is said to have been written by Raju, who was Conductor on the tempo of her husband. On December 10, 1980 Raju alias Sharafat Hussain had come to the house of Smt. Shakuntala Devi in the morning at about 8.00 a.m. and said that he should be kept again as Conductor of Tempo of Smt. Shakuntala Devi or else it would not be good for her. Raju is said to have written three letters demanding ransom (Firoti) and out of fear of death she did not inform the police about it and an amount of Rs. 10,000/- is said to have been paid to have been paid to a person at Agra sent by Raju, but Ashok did not return and later on could not be traced. A charge-sheet has been filed earlier against Sharafat Hussain and others and so far as the accused-appellant is concerned, he was only arrested later on and a charge-sheet was filed against him for offences under Sections 364, 365, 368, 386 and 120B, IPC.

3. The accused-appellant denied the charge and pleaded not guilty. The prosecution examined as many as 13 witnesses including one Partap Singh PW 2, who is the husband of Smt. Shakuntala and father of the missing boy Ashok. The learned Additional Sessions Judge No. 2, Jaipur City, Jaipur in the impugned judgment while acquitting the accused-appellant of all other charges, convicted him under Section 386 IPC and sentenced him to ten years' rigorous imprisonment & to pay a fine of Rs. 500/- or in default of payment of fine to further suffer six month's simple imprisonment. It may be stated that the sentence of ten years' rigorous imprisonment is the maximum sentence prescribed under Section 386 IPC.

4. We have been taken through the statement of Pratapsingh, PW 2 and he has made categorical statement that when went to the jungle the accused appellant was also there and when he (Pratap Singh) told the accused-appellant and Sharafat Hussain that he could not make arrangement for the money immediately, it was the accused appellant who had placed the barrel of the gun on his chest and said as to why he has arrived there if he had no money with him. In our opinion, the learned Sessions Judge on the evidence of Pratap Singh so far as

offence under Section 386 IPC against the accused-appellant is concerned, cannot be perverse and the learned Sessions Judge had arrived at the right conclusion.

5. In our opinion, in a case of present nature the sentence of more than five years and a fine of Rs. 1,000/- shall meet the ends of justice.

6. Consequently, we partly allow this appeal. The conviction of the accused-appellant under Section 386 IPC is maintained but the sentence awarded to him by the learned Additional Sessions Judge No. 2, Jaipur City, Jaipur is reduced to the period of imprisonment already undergone by him. which in this case is about five years and a fine of Rs. 1,000/-. In default of payment he would further suffer six months' simple imprisonment. The moment the fine is paid, the accused-appellant shall be released forthwith, if not required in any other case. The fine may be paid in the trial Court.

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