

Sanchu Ray Vs. State of Assam

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Court : Guwahati

Decided On : May-27-1986

Judge : K. Lahiri, J.

Appellant : Sanchu Ray

Respondent : State of Assam

Advocate for Pet/Ap. : Mr. S. K. Senapati, Mr. Senapati

Judgement :

K. Lahiri, J.

1. Khud Banu Bibi sold a parcel of land on consideration of Rs. 1000/- to fulfil her long cherished desire to visit Holy Mecca and Madin al Munawwarah a pilgrim. She handed over the amount to P.W. 1, Isaque Ali Choudhury for safe custody. Out of the amount Isaque spent Rs. 60/-. On 9-10-75 about 4.00 p.m. P.W. 1, Isaque queued up to purchase bus ticket at Premtala Bus Stand, Silchar. P.W. 2 Abdul Khaleque also accompanied him. While P.W. 1, Isaque was in queue he noticed the accused picking up the currency notes amounting to Rs. 940/- from his chest pocket. No sooner had the accused picked Isaque shouted and the accused ran. Isaque chased him followed by P.W. 2, Abdul Khaleque. Three police constables also joined them and ! the accused was caught red handed about 100 yds. away. The party took the accused to the police station, his person was searched and the exact sum of Rs. 940/- was recovered from his possession. It was a 'lucky catch'

which did not impede the voyage of Mstt. Khud Banu to the Holy places. By the grace of Allah the pick-pocket could be caught. Upon investigation of the case the police submitted charge-sheet Under Section 379, I.P.C. Five witnesses were examined on behalf of the prosecution and the accused examined his grandmother. The concurrent findings of the Courts below are that P.W. 1, Isaque Ali saw the accused picking his pocket and removing from his custody the currency notes kept in his chest pocket. His immediate reaction was a mournful exclamation that his pocket was picked. The accused immediately took to his heels chased by P. Ws. 1 and 2 and joined by 3 constables. He covered a distance of about 100 yards. He was outrun by P.W. 1 Isaque Ali and the constables. The Courts below believed that P.W. 1, Isaque had clearly seen the accused picking his pocket. P.W. 1 Isaque also stated that his immediate reaction was to wail that his pocket had been picked. This was a natural reaction of a person whose pocket was plundered. He spotted the accused and chased him followed by P.W. 2, Abdul Khaleque. The conduct of the accused, who had placed himself in queue, in running away was also taken as a relevant circumstance against the accused. Further the precise amount of Rs. 940/- was recovered from the person of the accused. It is thus seen that the prosecution established beyond reasonable doubt that it was the accused who had picked money from the possession of P.W. 1, Isaque. He was chased and (caught) red handed with the exact amount in his possession. The Courts below held that the essential ingredients of Section 379, I.P.C. were fully established against the accused and convicted him Under Section 379, I.P.C. and sentenced him to suffer rigorous imprisonment for one year. The courts below could not place any reliance on the testimony of the defence witness, namely, the grandmother of the accused. Although she was the grandmother of the accused she said that she was totally oblivious of the fact that the accused was being prosecuted for an offence of theft. The story presented by her was not accepted by the courts and that too very rightly. It matters very little whether his grandmother had given him some amount about three years back in view of the fact that in the instant case the prosecution has clearly established that the amount of Rs. 940/- was picked by the accused from the possession of P.W. 1, Isaque Ali and he was chased and the precise amount was recovered from his possession. It has, therefore, been proved beyond

reasonable doubt that the accused had committed theft in respect of that amount of Rs. 940/-.

2. Mr. S. K. Senapati, learned Counsel for the petitioner has stated that the entire evidence of the prosecution should be disbelieved because nobody keeps a sum of Rs. 940/- in his chest pocket. However, learned Counsel could not say where it should have been kept by P.W. 1, Isaque. Ordinarily, a person keeps money according to his own convenience. The money was inside the pocket and it was a secured place, unless some bad element lightens the burden by picking it up. The argument does not appeal. The next contention is that P.W. 1, did not carry the amount at all and the prosecution has failed to establish that P.W. 1 Isaque had the said amount in his pocket. There is a registered document to show that the pious lady Mustt. Khud Banu sold her landed property on consideration of Rs. 1000/-. P.W. 1, Isaque affirmatively said that he was carrying the amount and the statement was corroborated by P.W. 2, Abdul Khaleque as they had discussions regarding the money on their way to the bus stand. Unless some money was picked P.W. 1, Isaque could not have shouted that his pocket was picked. Not only did he shout but also chased the accused and imputed to all who were present at the scene of occurrence that it was the accused who had picked up money from his pocket. There is no grudge or animosity or grouse of any prosecution witness against the accused. The contention is heard to be rejected. Be that as it may, these are questions of fact, on appreciation of the evidence. The courts below have taken just, appropriate and reasonable view. As such, there is no merit in the contentions raised by Mr. Senapati, learned Counsel for the petitioner.

3. However, the last contention of Mr. Senapati, learned Counsel for the petitioner regarding sentence requires consideration. The accused was a young person aged about 19/20 years at the relevant time. The incident happened over 10 years ago. This appears to be the first offence of the accused. There is nothing against the petitioner's antecedent or character apart from the present allegation. Now, if the petitioner is sent to jail for a short term of one year he may turn from the pickpocket to a dacoit while undergoing sentence for the aforesaid period in blessed company of hardened criminals. However, the conviction and sentence must be maintained but a chance might be given to the young person to be a good

citizen, in accordance with the provisions of the Constitution and the law.

4. Upon hearing Mr. P. Pathak, learned Public Prosecutor, and Mr. S. K. Senapati, learned Counsel for the petitioner I maintain the conviction and sentence but taking all relevant facts into consideration I feel it expedient that the offender should be released on probation of good conduct instead of taking the sentence forthwith. The conviction and sentence to undergo R.I. for one year is maintained. However, he shall be released! on probation upon entering into a bond of Rs. 1000/- with one surety of the like amount to be executed-before the Chief Judicial Magistrate, Silchar, to appear and receive sentence when called upon during a period of two years and in the meantime to keep peace and be of good behaviour. If the petitioner-accused, during the period of two years, does not keep peace and be of good behaviour his bond shall be forfeited and he shall have to undergo the imprisonment for one year.

5. In the result the petition fails. However, the sentence is modified to the extent indicated above. Send down the records. The accused is asked to execute the bond within a month from today. Mr. S. K. Senapati, learned Counsel for the petitioner receives notice on behalf of the accused.