

Raunaq Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-06-1985

Reported in : 1987CriLJ445

Judge : N.N Sharma, J.

Appellant : Raunaq

Respondent : State of U.P.

Judgement :

ORDER

N.N. Sharma, J.

1. This revision is directed against order dt. 16-7-1981 recorded by Sri P.N. Roy, learned Sessions Judge, Moradabad, who dismissed criminal appeal No. 8 of preferred by revisionist and affirmed his conviction Under Section 411 of Indian Penal Code and sentence of one year's rigorous imprisonment as awarded by Sri B.C. Gautam, Munsif Magistrate, Moradabad in case No. 1656 of 1979 dt. 16-12-1980.

2. One gun and two live cartridges were stolen on the night of 18/19, April, 1979 at about 3 a.m. from the house of Govind Singh P. W. 1. The said gun was recovered from the possession of revisionist on 15-5-1979 giving rise to his trial Under Sections 399/402, IPC. On completion of investigation revisionist was sent up by

Sri D. S. Yadav P.W. 4.

3. Prosecution examined Govind Singh P.W. 1 about the ownership and theft of the gun, while V.S. Singh and Yad Ram P.W. 2 and 3 respectively were examined about the recovery of the gun from the possession of revisionist on 15-5-1979 at about 11.00 p. m.

4. Revisionist denied theft and recovery of the gun and his arrest on the day time and in the manner alleged by the prosecution. His defence was that he was going to the house- of his brother-in-law and when he arrived at Chaudhripur Bus-stand he was apprehended by the Police and roped in a false case. In defence Mohd. Jamil D.W. 1 was examined to testify that the revisionist was apprehended on 9-6-75 at 8.00 p. m. by Police while proceeding to a marriage party. He learnt this fact from Kallu son of Rahmat, resident of Chaudhripur.

5. Both the Courts below believed the prosecution story.

6. I have heard learned Counsel for the parties and perused the record.

7. The main legal point pressed before me in this revision was that the revisionist was involved in an offence punishable Under Sections 399/402 of Indian Penal Code and Section 25 Arms Act in connection with this recovery of the gun. Istiaq and others were co-accused. Co-accused Istiyaq was 'convicted Under Section 399/402 of Indian Penal Code and Section 25 Arms Act, but had been acquitted by this Court on 22-9-1981 by Hon'ble P.S. Gupta, J. in criminal appeal No. 135 of 1977. The witnesses of recovery relied upon by the prosecution in this case were also examined in that case. Veer Singh and Yad Ram were all disbelieved and the recovery was held as bogus. This case is an offshoot of the same transaction and so that finding recorded earlier by this Court comes in the way of conviction of the revisionist. Thus the conviction and sentence recorded by the Courts below are unsustainable.

8. I have carefully perused the record of criminal appeal No. 135 of 1977 of this Court and find that the aforesaid contention is correct.

9. It was held in *Sarnam Singh v. State* 1967 All Cr R 423 that, it would be highly detrimental to the administration of justice and would shake the confidence of the public in the same if a categorical finding recorded in favour of the accused on a point in an earlier case is allowed to be set at naught on the same point in a subsequent case which was an offshoot of the previous case. If this were allowed there would be two contradictory findings in regard to the same matter, which cannot but have a very detrimental effect on the administration of justice.

10. In *Manipur Administration, Manipur v. Thokechom Bira Singh* 1965 (1) Cri LJ120 (SC), it was observed that the rule of issue estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel of res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2). I respectfully agree with the said observations.

11. In the result, revision is allowed. The conviction and sentence of the revisionist are set aside and he is acquitted of the charge Under Section 411 of Indian Penal Code. He need not surrender to his bonds, which are discharged.

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