

Zakir Husaln Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-20-1989

Reported in : 1990CriLJ876

Judge : V.P. Mathur, J.

Acts : Indian Penal Code (IPC) - Sections 379

Appeal No. : Criminal Appeal No. 1963 of 1984

Appellant : Zakir Husain

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Satish Trivedi, Adv.

Judgement :

ORDER

V.P. Mathur, J.

1. Mr. Aditya Prakash Sharma, Judicial Magistrate (Railways), Moradabad, vide his order dated 18-2-1983 convicted the appellant Zakir Hussain of an offence under Section 379 I.P.C. and sentenced him to rigorous imprisonment for a period of six months.

2. Criminal Appeal No. 85 of 1983 was preferred and came up for hearing before Mr. V. C. Jain, the then Sessions Judge of Moradabad, who dismissed it in toto, vide, his order dated 10-9-1984. Now the applicant-revisionist comes up to this Court through this revision, which has been admitted only on the point of sentence.

3. The prosecution story in brief was that on 20-8-1978 at about 4-30 p.m. when the complainant Manna Singh was standing near the over-bridge staircase on platform No. 2 at Moradabad Railway Station and was waiting for the train bound for Gajraula, the applicant who was also standing near-by in the crowd, picked his pocket and tried to bring out a sum of Rs. 50/- currency notes from the front shirt pocket of the complainant. He was immediately caught, as the complainant held his hand while it was still in his pocket. The currency notes were all recovered. The accused-applicant was taken to the police station Government Railway Police and was handed over there and the first information report was lodged. Usual investigation was made and then the case started.

4. I have very carefully gone through the judgments of the two Courts below and the finding of fact recorded by them does not call for any interference by this Court, because it is concurrent and because it is supported by the evidence, that has been adduced in the case.

5. The applicant has been sentenced to undergo six months' rigorous imprisonment. It appears that this occurrence took place on 20-8-78, on which date the applicant was taken into custody. On 23-8-1978 he was granted bail by the Court below, but it appears that he could be released only on or about 4-9-1978. After the appeal had been dismissed, vide order dated 10-9-84 he was taken into custody and remained in jail custody at least up to 20-9-84, when bail was granted to the applicant by this Court. Thus for a total period of near about 25 days this man has already been in jail custody and since the occurrence took place in the year 1978, it will be too severe punishment, if he is directed to go to the jail custody again to serve out the entire sentence. More so because it was only an attempt to commit the pick pocketing and the entire amount was ultimately recovered. The learned counsel says that he and his client will not treat it to be an

enhancement in the sentence, if in addition to the imprisonment already undergone the applicant is also visited with some amount of fine. Under these circumstances, while the conviction of the applicant-revisionist under Section 379 I.P.C. is upheld and confirmed, the sentence is reduced to imprisonment already undergone plus a fine of Rs. 100/- (Rs. one hundred) which should be paid within two months from today and in default of the payment of which the applicant shall undergo rigorous imprisonment for a period of one month.

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