

Quddus Vs. State

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Court : Allahabad

Decided On : Sep-01-1995

Reported in : 1996CriLJ3201

Judge : T.P. Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 380 and 457; Code of Criminal Procedure (CrPC) - Sections 428

Appeal No. : Criminal Revision No. 2300 of 1982

Appellant : Quddus

Respondent : State

Advocate for Pet/Ap. : G.S. Hajela, Adv.

Judgement :

ORDER

T.P. Garg, J.

1. This revision by Quddus, applicant is directed against the judgment dated 23-11-1982 passed by Sri P. Dayal, Sessions Judge, Shahjahanpur in Criminal Appeal No. 288 of 1982, whereby the conviction of the applicant under Section 457/380 IPC recorded by Judicial Magistrate, Tilhar vide judgment dated 27-7-82 was maintained but the sentence was reduced from two years R.I. to one year's

R.I. on each count.

2. The accused-applicant along with two others was tried for offences under Sections 457/380 IPC on the allegations that on the night between 29/30 May, 1979, in Mohalla Bangash, within the circle of Police Station Kotwali, Shahjahanpur, he along with his companions trespassed into the house of Nabbu Khan, complainant and committed theft of house hold property. The stolen property was recovered from his possession including some shirts, bush-shirts, salwar, jumpers, towel and other clothes, totalling nine in all.

3. The prosecution examined as many as two witnesses. The applicant denied the allegation. The learned trial Magistrate believing the prosecution version and disbelieving that of the accused, held him guilty under Section 457/380 IPC convicted him thereunder and sentenced to undergo R. I. of two years on each count. The applicant preferred an appeal which was heard by the learned Sessions Judge, who vide his judgment dated 23-11-1982 maintained the conviction and reduced the sentence from two years' R.I. to one year's R.I. on each count. The sentences were directed to run concurrently, hence this revision.

4. Today, at the outset, the learned counsel for the applicant has not challenged the conviction of the applicant on merits, but he has prayed only for reduction in sentence on the plea that the accused is undergoing the ordeal of a long trial lasting over a period of about 15-16 years.

5. After hearing counsel for the parties, and going through the record of the case, I find merit in the submissions made by the learned Counsel for the applicant. The conviction of the applicant is accordingly maintained. Even otherwise, his conviction is based upon correct and faithful appraisal of the evidence on record and is well founded. Both the eye-witnesses; namely Nabbu Khan and Babu Khan have stated in unequivocal terms that the applicant was captured redhanded, and later on produced before the Police. The prosecution evidence is satisfactory, cogent and reliable and has been rightly believed by both the Courts below. The defence version, on the other hand, is in the nature of an excuse and has been rightly rejected by both the Courts below. The conviction of the applicant is thus maintained even on merits. As regards sentence, suffice will it be to say that the

occurrence took place in the year 1979, the trial in the Court of learned Magistrate concluded in the year 1982 and his appeal was disposed of in November 1982 by the learned Sessions Judge. Ever since the registration of the case against him, he must have been undergoing the ordeal of a very long trial, agony and pain for which a case for reduction in sentence has been clearly made out. Accordingly, the sentence awarded to the applicant is reduced from one year's R.I. to 3 months' R.I. under both counts. The sentence shall, however, run concurrently. The period of custody in which the accused remained in jail shall, however, be set off against the sentence awarded to him today under the provisions of Section 428 Cr. P. C. In case the applicant is on bail, his arrest warrant be issued to serve out the sentence awarded to him today.

6. With the aforesaid modification in sentence, this revision is dismissed.

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