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Aslam @ Deewan Vs. State of Rajasthan

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Court : Supreme Court of India

Decided On : Sep-25-2008

Reported in : 2008(12)SCALE819

Judge : Arijit Pasayat and; Mukundakam Singh, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 392 and 394; Evidence Act, 1872 - Sections 27

Appeal No. : Criminal Appeal No. 1531 of 2008 (Arising out of S.L.P. (Crl.) No. 3925 of 2007)

Appellant : Aslam @ Deewan

Respondent : State of Rajasthan

Advocate for Def. : Milind Kumar and ; Aruneshwar Gupta, Advs.

Advocate for Pet/Ap. : Chaityanya Siddharth (A.C.) and; P. Purnima, Advs

Disposition : Appeal dismissed

Prior history : From the Judgment and Order dated 2.3.2007 of the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Crl. Jail Appeal No. 1233 of 2004

Judgement :

Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court, Jaipur Bench. Two appeals, one filed by the present appellant and the other by Wasim @ Raju were directed against the common judgment and order of learned Special Judge, Fake Currency Cases, Jaipur City, Jaipur. The accused persons were found guilty and were convicted for offence punishable under Section 394 of the Indian Penal Code, 1860 (in short `IPC'), and sentenced to undergo RI for 10 years.

3. The background facts in a nutshell are as follows:

A written report (Exhibit P-1) was lodged by Jagdish Soni (PW-1), at Police Station Manak Chowk, Badi Chopad, Jaipur, wherein it was mentioned that on 24.4.2002 at about 8.30 to 8.45 p.m. his brother-in-law - Shri Nand Kishore S/o Shri Rameshwar Das, was looted by some miscreants in between Partanion-Ka-Rasta and Gali Mahadev, who inflicted grievous blow on his head by iron rod and snatched his bag and ran away. Shri Nand Kishore was got admitted in the Bangar Hospital.

On the basis of the above report, the police registered a chalked FIR (Exhibit P-2) under Section 392 IPC. During investigation of the case, accused Waseem @ Raju S/o Qadir was arrested by the police on 2.5.2002 at Kadkad-duma Court premise, Delhi, at about 3.00 p.m., vide arrest-memo (Exhibit P-27) and accused-appellant Aslam @ Deewan S/o Shamshu Khan was arrested vide Exhibit P-25 on 11.5.2002 in the house of Sheokat Bhai, near Bilala Masjit, Delhi. Accused Waseem gave an information vide Exhibit P-21, under Section 27 of the Indian Evidence Act, 1872 (in short `Evidence Act') about the place of incident; he gave another information vide Exhibit P-22 in respect of shop from where he took one cycle on rent for the said incident, and the bag, which was looted on the date of the incident, and told that these articles lying at House No. C-48, Shahid Nagar, Gali No. 3, Police Station Sahibabad (UP). He gave the third information under Section 27 of the Evidence Act vide Exhibit P-23 about Rs. 10,000/- which were given to Bharat Properties, Loaini Road, to purchase a plot. In pursuance of the aforesaid information, a sum of Rs. 10,000/- was recovered vide recovery - memo

Exhibit P-24 in presence of witnesses Sajid and Manzoor Hasan. The other recoveries were also made in pursuance of the information given by the accused. The iron rod which was used for inflicting injury on the person of injured Nand Kishore was seized vide seizure-memo Exhibit P-12 on 15.5.2002. The handbag and other gold items were recovered as per the information of the accused persons vide Exhibit P- 18. The other informations were also given by the accused persons under Section 27 of the Evidence Act and recovery was effected at their instance and information given in writing by them voluntarily.

4. Since the accused persons pleaded innocence, trial was held. 21 witnesses were examined to further the prosecution case. Nand Kishore (PW-11) was the injured witness. The trial Court considering the evidence on record found the accused persons guilty. Thereafter appellants, as noted above, filed appeals. Before the High Court the primary stand was that the evidence of PW-11 was not sufficient to fasten the guilt on the accused. The High Court did not find any substance and dismissed the appeal.

5. In support of the appeal, it was submitted that the evidence adduced by the prosecution was not sufficient to fasten the guilt on the appellant for offence punishable under Section 394 IPC.

6. Learned Counsel for the State, on the other hand, supported the judgment.

7. Section 394 describes punishment for voluntary causing hurt in committing or attempting to commit robbery. The offence under this section is more serious offence than one under Section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct class of persons. Firstly, those who actually cause hurt and secondly those who do not actually cause hurt but are 'jointly concerned' in the commission of offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability.

8. In the instant case test identification parade was held. The accused persons were identified during investigation by the injured Nand Kishore Soni (PW-11) in the presence of A.C.J.M, Mukesh Jat (PW-21). PW-11 identified the articles which were recovered in the presence of the Magistrate Arti Bhardwaj (PW-20). The identification proceedings reports are Ex. P-13 and P-14.

9. As noted above, the identification proceeding was conducted by Mukesh Jat, the Judicial Magistrate (PW-21). The stand that PW-11 may have got opportunity to see the accused persons earlier was found to be without any substance by both the Trial Court and the High Court. The identification of the articles was done in the identification proceedings carried out by Arti Bhardwaj, Judicial Magistrate (PW-20).

10. So far as the sentence is concerned, the minimum is ten years. Therefore, there is no question of reducing the sentence, though the appellant's stand was that the appellant has already suffered custody for a considerable length of time. Same is of no consequence. The Trial Court has also noted that both the accused persons are habitual offenders and appeals involving similar offences were pending before the High Court.

11. Since in the instant case minimum sentence has been awarded, we find no reason to interfere with the appeal.

12. The appeal is dismissed.

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