

Ramesh Vs. State

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Court : Delhi

Decided On : Jan-10-2005

Reported in : 116(2005)DLT683; 2005(79)DRJ463

Judge : Manju Goel, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 357, 428 and 482; Indian Penal Code (IPC) - Sections 326

Appeal No. : Criminal Revision Petition No. 578/04 and Crl. M. Nos. 1473/04 and 2-3/05

Appellant : Ramesh

Respondent : State

Advocate for Pet/Ap. : A.K. Mishra, Adv. and

Judgement :

Manju Goel, J.

1. Although the revision petition was fixed for hearing on 25.1.2005 it is taken up today on account of Crl. Mis. No. 3/2005 for prepayment of the date and for disposal of the Crl. Mis. No. 1473/04 for bail and suspension of sentence. In the meantime, an application under Section 482 Cr.P.C. has also been filed for compounding the offence.

2. The revision petitioner, Ramesh @ Pappey, was tried and convicted for an offence under Section 326 IPC by the court of M.M. and the conviction was upheld in appeal by the court of Sessions. As per the two judgments the petitioner on 10.11.1988 despite being warned by the father of the victim proceeded to burn the crackers in the courtyard where children were playing and the victim girl aged 5 years was sleeping on a cot and threw a burning cracker on the victim thereby injuring her left eye. The victim lost her eye sight in her left eye. After examining the witnesses the learned trial court convicted the accused and after hearing the accused on the quantum of sentence imposed a penalty of three years RI and a fine of Rs. 2,000/-. The appellate court of Additional Sessions Judge has not interfered with the penalty.

3. In the application under Section 482 Cr.P.C. (Crl. M. No. 2/2005) it is contended on behalf of the victim that she has attained the age of majority, that she is closely related to the accused and that through the intervention of common relatives and friends her family and the family of the accused have compromised. It is further contended that since two families are now living in harmony, no useful purpose would be served by punishing the accused and, therefore, she may be granted permission to compound the offence of the accused.

4. Admittedly, Section 326 IPC is not a compoundable offence. Learned counsel for the accused referring to a judgment reported in Recent Criminal Reports titled as Kailash & Ors. vs. State of Haryana reported as 1992 (1) RCR 198 argues that the compounding is permissible even in a case under Section 326 IPC. Having gone through the judgment I find that in that case although the conviction was under Section 326 IPC the injury was simple and the High Court of Punjab & Haryana did not actually compound the offence. It only reduced the penalty.

5. I find no force in the application for compounding the offence and the same is accordingly dismissed.

6. On merit of the revision petition, learned counsel for the petitioner has nothing to submit except praying for reduction of sentence particularly in view of the compromise arrived at between the parties. He prays that the accused be released with a sentence of the period already undergone by him in custody which seems to

be of only four months. I find from the copy of the order of the learned M.M. that the Magistrate had turned down request to take a lenient view in the matter. I think the Magistrate took a very appropriate view as per the situation which then obtained but since now the injured having reached the age of majority has compromised with the accused and is willing to forget and forgive and since it may not be conducive to the friendly relations of the neighbours to impose such a long sentence of imprisonment, it will be appropriate to reduce the substantive sentence and instead compensate the victim for the damage caused to her left eye by the offence. I, therefore, invoke the provisions of Section 357 Cr.P.C. and alter the sentence as under:

The petitioner shall undergo RI for one year and shall pay a fine of Rs. 30,000/- out of which Rs. 28,000/- would be paid to the victim by way of compensation. In default of payment of fine, the accused shall undergo SI of 15 months. The accused shall be entitled to the benefit of Section 428 Cr.P.C. The period of detention undergone by him during investigation, inquiry or trial shall be set-off against the sentence.

7. Copy of this order be sent to the court of concerned M.M. and to the Superintendent of Tihar Jail for necessary compliance.

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