

Ram Chand Vs. the State

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Court : Delhi

Decided On : Aug-05-1969

Reported in : 6(1970)DLT172

Judge : Jagjit Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 394; [Probation of Offenders Act, 1958](#) - Sections 3

Appeal No. : Criminal Miscellaneous Petition Appeal No. 102 of 1968

Appellant : Ram Chand

Respondent : The State

Advocate for Pet/Ap. : Ramesh Chand and; D.P. Sud, Advs

Judgement :

Jagjit Singh, J.

(1) Four persons, including Ram Chand then aged about 17 years, were tried by the judicial Magistrate 1st Class, Kandaghat for an offence under section 394 of the Indian Penal Code.

(2) The prosecution case was that on the night between the 7th and 8th of March, 1968 K.apura Ram, after closing his shop was sleeping outside it on a

platform(Thari). About midnight Bal Kishan woke him up by saying that he wanted to buy some rice for a person who was ill. As soon as Kapura Ram opened the shop and entered it Bal Kishan and three of his companions grappled with him and when he fell down gave him some blows. Those persons also forcibly removed Rs. 500 and then escaped. The hue and cry raised by him attracted the attention of Kishori Lal and Balbir Singh who came to the place of occurrence and helped in removing him to the hospital.

(3) The Doctor in charge of the hospital telephoned the nearest police station when AS.I. Babu Ram went to the hospital and recorded the statement of the injured person on the basis of which a case was registered.

(4) After investigation Bal Kishan, Soban Lal, Labh and Ram Chand were sent up for trial. Charge was framed against each one of them under section 394 of the Indian Penal Code and on their pleading guilty they were convicted and sentenced to two years rigorous imprisonment. The learned Magistrate while passing the sentence noted the fact that all the accused were of young age.

(5) Against the judgment of the trial Magistrate, dated November 30, 1968, a petition purporting to be under article 227 the Constitution and under section 491 of the Code of Criminal Procedure was, however, filed in this Court, in that petition it was mainly averred that the plea of the petitioner before the Magistrate did not disclose the commission of an offence under section 394 of the Penal Code for when he entered the shop of Kapura Ram it was the latter who gave a blow to him and whatever was done by him was in exercise of the right of his private defense. It was mentioned that the only question that could arise on the facts of the case was whether or not he had exceeded the right of self defense and even if he had exceeded that right he could not be convicted for the offence of voluntarily causing hurt in committing robbery. It was urged that in any case he was entitled to be dealt with under the provisions of the Probation of Offenders Act

(6) The charge against the petitioner and the other accused was as under:

'THAT you Labhu Singh and your co-accused Ram Chand, Sohan Lal and Bal Kishan on or about the day night between 7/8th of March, 1968 at Simla (Ram

Bazar) committed robbery of the property of Kapura Ram and that as such Labh Singh and your co-accused Ram Chand, Sohan Lal and Bal Kishan voluntarily caused hurt to Kapura Ram and that you all thereby committed an offence punishable under section 394 of the Indian Penal Code and within my cognisance. And I hereby direct that you all be tried by me on the aforesaid charge.'

The charge was read out and explained to the petitioner in Hindi and his, plea was recorded. The petitioner pleaded guilty to the charge and did not wish to make any defense. His plea reads as follows:-

'I plead guilty to charge and do not wish to make any defense On the night between 7/8-3.68 at about 11 P.M. Labh Singh my co-accused sent Bal Kishan my co-accused with Rs. 5 to purchase rice from Kapura Ram. On a signal from Bal Kishan, Labh Singh who was wearing Nakab, Sohan Lal and myself entered the shop of said Kapura Ram. Kapura Ram got frightened and tried to raise an alarm. Kapura Ram then gave kick blow to me and fell down. Sohan Lal my co-accused sat on his chest and gagged his mouth whereas Bal Kishan went on giving fist blow on the person of Kapura Ram and myself started giving brass fist blows on the head of Kapura Ram. Labh Singh my co-accused forcibly removed Kapura Ram of Rs. 500',

(7) Shri Ramesh Chand, learned counsel for the petitioner, somewhat feebly contended that from the plea of the petitioner it could not be said that he had pleaded guilty to the Charge under section 304 of the Penal Code. It was submitted that the shop of Kapura Ram, situate in Ram Bazar, Simla. possibly could not be open at midnight but if it was some how kept open then the petitioner by entering the shop and causing some injuries to the shopkeeper, after receiving a kick blow, was obviously acting in exercise of his right of private defense.

(8) Another submission made was that the petitioner being less than twenty-one years of age should have been given the benefit of the provisions of section 4. of the [Probation of Offenders Act, 1958](#) (hereinafter referred to as 'the Act') and that under section 11 of the Act the High Court can make an order which could be made by any Court empowered to try and sentence the offender to imprisonment or by the appellate or the revisional Court

(9) The contention raised by the learned counsel is not tenable. It was nobody's case that the shop was open when the petitioner and his three companions entered it. On the other hand it was got opened by one of them on the pretext that some rice had to be purchased for a person who was ill. The petitioner specifically stated that Balkishan was sent with Rs 5 to purchase rice from Kapura Ram and on a signal from Bal Kishan he along with Labh Singh and Sohan Lal entered the shop when Kapura Ram tried to raise an alarm and gave a kick blow to him. It was further stated that Sohan Lal sat on the chest of Kapura Ram and gagged his mouth while he and Bal Kishan gave him some blows. It was added that Labh Singh forcibly removed Rs. 500.

(10) When persons in furtherance of their common intention commit robbery and in doing so cause hurt, each one of them is guilty of an offence under section 394 of the Penal Code. The plea of the petitioner was a detailed one and did not leave anything vague or unadmitted. His conviction for an offence under section 394 was in no way unjustified.

(11) The learned counsel for the petitioner vehemently urged that the petitioner being under twenty one years of age it was incumbent on the trial Court, after finding him guilty, not to sentence him to imprisonment unless it was satisfied, having regard to the circumstances of the case including the nature of the offence and the character of the offender, that it was not desirable to deal with him under section 3 or section 4 of the Act, and that the Court could only pass a sentence of imprisonment after recording its reasons for doing so. My attention was also drawn to provisions of sub-section (2) of section 3 of the Act according to which for purposes of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the Court has to call for a report from the probation officer and has to consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender. Section 3 is applicable where a person is found guilty of having committed in offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, or any offence punishable with imprisonment for not more than two years or with fine, or with both, and empowers the Court to release certain offenders after admonition

Section 4 give power to the Court to release certain offenders on probation of good conduct. Sub-sec 1311 (1) of section 6 of the Act provides that an offender found guilty of having committed an offence punishable with imprisonment for life cannto be dealt with under section 3 and 4. That Sub-section is to the following effect: -

'WHEN any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment but nto with. imprisonment for life, the Court by which the person is found guilty shall nto sentence him to imprisonment unless it is satisfied that , having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would nto be desirable to deal with him under section 3 or section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.'

An offence. under section 394 of the Penal Cod; is punishable with imprisonment for life or with imprisonment which may extend to ten years and fine. Shri Ramesh Chand contends that section 394. provides an alternative sentence and, thereforee, there is no bar for benefit being given to the petitioner of the provisions of section 4 of the Act. This contention is equally untenable. The offence being punishable with imprisonment for life the petitioner could nto be given benefit of the provisions of section 3 or section 4 of the Act. If an authority is needed for this proposition reference may be made to Jogi Nahak v. The State in which R.. K.. Das, J. after considering the case law on the subject observed that the phrase imprisonment for life or imprisonment for ten years and fine' cannto be read conjunctively so as to mean that it provides for an alternative sentence. The learned Judge held that an accused convicted under section 394 of the Indian Penal Code cannto be given the benefit of the provisions of section 3 and 4 of the Act and released on probation of good conduct, on the ground that the offence did nto provide for punishment with imprisonment for life. With respect I am in agreement with that view.

(12) The offence for which the petitioner was found guilty being punishable with imprisonment for life the petition to this Court was misconceived and is, thereforee

dismissed. As pending disposal of the petition the petitioner had been admitted to bail the bail-bonds are cancelled. The petitioner should surrender himself immediately for undergoing the remaining sentence. If the petitioner does not so surrender himself, the District Magistrate, Simla, shall issue non-bailable warrants for the arrest of the petitioner so that the remaining sentence is served by him.

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