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Anil Kumar Vs. State

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Court : Delhi

Decided On : Aug-23-1991

Reported in : 45(1991)DLT350

Judge : V.B. Bansal, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 379

Appeal No. : Criminal Revision Appeal No. 114 of 1979

Appellant : Anil Kumar

Respondent : State

Judgement :

V.B. Bansal, J.

(1) This order will dispose of revision petition filed by Anil Kumar thereby challenging his conviction under Sec. 379 Indian Penal Code and the sentence of Ri turn four months vide Judgment dated 26th February, 1979 and order dated 27th February, 1979 by Metropolitan Magistrate when on appeal was continued by an Addl. Sessions Judge, Delhi on 29th May, 1979.

(2) Briefly stated the allegations against the petitioner have been that on 9th October, 1975 Sedu Ram along with his brother Sohan Lal was traveling in Mini Bus No. Dlp 5594 from Karol Bagh at about 5.00 P.M. The petitioner was also

standing near him. Sedu Ram had raised his hands while holding the rod in the coming of the bus and at that time petitioner removed 10 rupee note from pocket. Hand of Anil Kumar was secured by Se Ram who threw 10 rupee note on the ground and tried to escape but was secured. They produced the 10 rupee currency note and Anil Kumar in P.S. Trilak Nagar where statement of Sedu Ram was recorded on the basis of which Fir 962 was recorded. The currency note Rs. 10.00 produced by Sedu Ram was taken into possession and it was with these allegations the challan was filed. In support of Rs case the prosecution clammed Swaran Kumar (Public Witness 1) Sedu Ram (Public Witness 2), Sohan Lal (P W 3) and ASt Mana singh (P W 4). The accused when examined under Sec 313 Cr.P.C. deemed the allegations and claimed that he has falsely been implicated in this case. He has also claimed that in fact no witness deposed against him but did not produce any evidence in defense.

(3) After nearing arguments the trial resulted in conviction and sentence by me trial Court which was confirmed by the appellate Court.

(4) There has not been any appearance in this case though it has been on Board throughout this week. I have, thus, not been able to get any assistance from either side in this case. I nave, however, examined the file myself and nave also perused toe judgment of the trial Court and appellate Court.

(5) According to the prosecution story the petitioner had removed a 10 rupee currency not from the pocket of Sedu Ram who along with his brother Sohan Lal was traveling in the mini bus. These two witnesses, namely, Sedu Ram (Public Witness 2) and Sohan Lal(PW3) have made a categorical statement about the traveling in the mini bus and about the removal of a 10 rupee note from the pocket of Sedu Ran by a person who was apprehended by them in the bus. It is also stated by them that the person apprehended was taken to the Police Station where statement Ext. Public Witness 2/A of Sedu Ram was recorded by the Investigating Officer. The recording of the statement of Sedu Ram also stands proved from the testimony of Asi Maha Singh (Public Witness 4). The statements of these witnesses have not been challenged on these points. There is nothing to suggest that both Sedu Ram and Sohan Lal were not in a position to identify if the

petitioner was the same person who removed the 10 rupee note from the pocket of Sedu Ram and it was on account of the time gap since they were examined in Court on 15th January, 1979, i.e. after a period of more than 3 years. Merely because the witnesses were unable to identify the petitioner would not, in my view, a ground to hold that the petitioner had not removed the 10 rupee note from the pocket of Sedu Ram. Asi Maha Singh has fully corroborated about the petitioner having been produced before him along with a 10 rupee currency note. I do not find anything wrong in the conclusion arrived at by the learned trial Court which has been upheld by the appellate Court holding the petitioner guilty for the offence under Sec. 379 IPC.

(6) The short question now for consideration is about the sentence. This is a case relating to an incident of October 1975. The petitioner was convicted on 26th February, 1979 and his appeal was dismissed on 26th May, 1979. He preferred this revision and was ordered to be released on bail vide order dated 8th June, 1979. It is, thus, clear that he has now been on bail for over 12 years in respect of the incident of 1975 and for some time he has been in custody. Considering all these facts I am clearly of the view that it would not be in the interest of justice to send him to jail now and it would be appropriate if the sentence is reduced to the period already undergone.

(7) As a result the revision petition is accepted in part. Conviction of the petitioner under Section 379 Indian Penal Code is maintained. The order of sentence of imprisonment is, however, reduced to the period for which has already undergone.

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