

Ashok Kumar Vs. State

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Court : Delhi

Decided On : Feb-07-2005

Reported in : 119(2005)DLT269; 2005(81)DRJ749

Judge : Manju Goel, J.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 34, 393 and 457; Code of Criminal Procedure (CrPC) - Sections 428

Appeal No. : CrI. Revision Petition No. 176/2004

Appellant : Ashok Kumar

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : K.K. Manan, Adv

Judgement :

Manju Goel, J.

1. In case FIR No. 428/99 registered at police station Malviya Nagar under Sections 393/457/34 Ashok Kumar and Rajinder Kumar were prosecuted for offences under Section 393/457 read with Section 34 IPC. The petitioner , Ashok Kumar, in addition was also prosecuted for the offence under Section 27 of Arms

Act.

2. Both the accused entered the house of the complainant, Madan Lal Arora in the night of 20.12.1989 and attempted to rob Madan Arora and his relative Tara Chand. Ashok, with knife in his hand, approached the complainant and advised the co-accused Raju to take care of Tara Chand. Ashok is alleged to have threatened the complainant of murder unless he complied with the demands of the robbers. The attempt to rob was resisted successfully. One of the accused was apprehended at the spot and the other was subsequently arrested on the disclosure statement of the first. The conviction for the offence of lurking house trespass and for the attempt to commit robbery have been upheld in appeal. So has been the conviction for the offence under Section 27 of the Arms Act. For the offence under Sections 457 & 393 read with Section 34 IPC, both the accused were sentenced to imprisonment for two years and fine of Rs. 2,000/-. In addition Ashok was sentenced to simple imprisonment for three years and fine of Rs. 2,000/- for the offence under Section 27 of the Arms Act. The two revision petitions are preferred by the two accused against the conviction and sentence.

3. The learned counsel for the petitioners, Mr. K.K. Manan, prays for leniency in the sentence rather than challenging the concurrent findings of the M.M. and the ASJ on the point of conviction. He does not dispute that the offence is serious and that in the interest of the society every attempt should be made to prevent occurrence of such crimes. Yet he submits that the petitioners have undergone the agony of trial till the date of final conviction for about 14 years and that at the time of the commission of offence, he was young and immature. It is stated that during these long years, the petitioners have not been involved in any other offence and had not been involved in any previous offence.

4. Sentencing is a difficult balancing act in which different aspects of deterrence and reform have to be kept in mind. The trial court has referred to the advice given by the Supreme Court in the case of Dhananjoy Chatterjee alias Dhana v. State of West Bengal reported as (1994) SCC 220, which is as under:

'shockingly large number of criminal go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system

credibility. The imposition of appropriate punishment is the manner in which the court respond to the society's cry for justice against the criminals. Justice demands that court should impose punishment befitting the crime so that the courts reflect public abhorrence for the heinous crime committed by the accused. The court must not only keep in view the rights of the criminals but also the rights of the criminals but also the rights of the victims of the crime and the whole society at large while considering imposition of appropriate punishment.'

5. The Supreme Court in State of U.P. v. Kishar reported as JT 2004 (1) SC 289 has recapitulated its earlier judgment in Sevakak Perumal etc. v. State of Tamil Nadu : 1991 CriLJ1845 which advised the courts as follows:

'Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.'

6. I have given my careful thought to the subject in hand. It is true that if such offences are not adequately punished no citizen can hope to live in safety and security. However, I do not see any reason why the offence under Section 27 of the Arms Act has been viewed more seriously than the offence under Sections 457 & 393 of Indian Penal Code. In the present case the offence under Section 27 of Arms Act has been committed in the same transaction in which the offence under Sections 457 & 393 has been committed. When offence under Sections 457 & 393 have been visited by a sentence of imprisonment for two years, there is no reason why a sentence of three years should be imposed for the offence under Section 27 of the Arms Act. The learned trial court may have attempted to make a distinction between the offence of the petitioner and that of co-accused Rajinder because it was the petitioner who had a knife in his hand. However, keeping in view that both had entered the house of the complainant with the common intention of committing robbery and of the two Ashok opted to carry the knife does not make the petitioner, Ashok Kumar, guilty to a greater extent. It is true that Rejjinder cannot be convicted for the offence under Section 27 of the Arms Act

because of the technical nature of the offence but at the same time there is no reason why for this technical offence the petitioner Ashok needs to be further punished by imprisonment for a longer period.

7. The next question is what should the sentence? It can be seen that the offence actually committed is of lurking house trespass and that of using a knife. However, no one was actually hurt nor any robbery was actually committed. In view of the nature and manner in which the offence is committed I feel that rigorous imprisonment for two years is a rather harsh sentence. Hence I reduce the sentence of both the accused for the offence u/s 457/393 r/w Section 34 IPC to 18 months and fine of Rs. 2,000/- each, in default to undergo S. I. for 2 months. I also reduce the sentence of imprisonment for the offence of Ashok u/s 27 Arms Act to 18 months and fine of Rs. 2,000/- and in default to undergo SI for 2 months. Needless to say that all these sentences will run concurrently and the petitioners will get the benefit of Section 428 Cr.P.C.

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