SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Faizu Vs. State

Faizu Vs. State

SooperKanoon Citation : sooperkanoon.com/703459

Court : Delhi

Decided On : Aug-18-2000

Reported in : 2000CriLJ5061; 2000(56)DRJ487

Judge : Dalveer Bhandari, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 363 and 366

Appeal No. : Crl. Appeal No. 47 of 1978

Appellant : Faizu

Respondent : State

Advocate for Def. : Mrs. Santosh Kohli, Adv.

Advocate for Pet/Ap. : Mr. Akshay Bipin, amices Curia

Judgement :
ORDER

Dalveer Bhandari, J.

1. The appellant was convicted by the learned Sessions Judge under Sections 363 and 366 IPC and was sentenced to one year's R.I. under Section 363 IPC and two years rigorous imprisonment under Section 366 IPC. Brief facts, according to the prosecution are as under :

2. On 29.5.1975, Smt. Rukia filed FIR in which she alleged that her daughter Razia Begum was missing and on inquiry she was informed that some Yusuf and Suleman and her daughter were seen with Faizu, who is the resident of a jhuggi nearby. She also mentioned that she had the suspicion that her daughter has been taken away by the appellant Faizu. On investigations, she was recovered from the appellant Faizu. Her statement was recorded and she was sent for medical examination. Before the learned M.M., Shahdara she stated that she was given inducement by the appellant that she will be given some clothes. Another lady, namely, Smt. Daropati also persuaded her to accompany Faizu.

3. The appellant took her to Agra and kept her for 2 3 days. There he had forcibly committed rape on her. The learned Trial Court had acquitted the appellant of the charge under Section 376 I.P.C. However, the appellant was convicted under sections 363 and 366 IPC. The appellant examined 15 witnesses to strengthen his case. I have carefully examined the entire evidence on record and no interference is called for. However, on the question of reducing the sentence, following judgments have been cited:

4. Reliance has been placed on the judgment of the Supreme Court in the case of Sarup Chand v. State of Punjab; reported in 1987(1) Cri 818. In this case the appellant was convicted by the trial court under Section 161 IPC and under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The conviction was upheld by the High Court. In appeal, Hon'ble the Supreme Court while maintaining the conviction had reduced the sentence to the period already undergone on the ground that six years have passed from the date of the incident and this is the first time the appellant had committed an offence.

5. In the instant case, the appellant has remained in custody for some time and 25 years have lapsed since the date of the incidence. It is further stated that the appellant has not been involved in other criminal case, thereforee, according to the learned amices curiae following the ratio of aforesaid judgment while maintaining the conviction of the appellant in this case, the sentence be reduced to the period already undergone.

6. The learned amices curiae also relied on the judgment of this Court in the judgment of Inder Parkash Shingal v. State; (1989) 38 DLT (SN) 5. In this case also the accused appellant was convicted under Section 161 Indian Penal Code and Section 5 (1) (d) & 5(2) of the Prevention of Corruption Act, 1947. The Court while maintaining the conviction reduced the sentence of the imprisonment of appellant to the period already undergone on the ground that the appellant has faced the agony of trial for about 18 years now.

7. The learned amices curiae placed reliance on the judgment. In the case of B.G. Goswami v. Delhi Administration; decided by the Supreme Court reported in 1973 SCC (Crl.) 796. The Court observed as under:

'Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilised societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both loss their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.'

8. This case has been followed in a number of subsequent judgment by the Supreme Court and various other courts. In Ramesh Kumar Gupta Vs . State of M.P., : 1995 CriLJ3656 , while relying on the judgment of B.G. Goswami v. Delhi Administration (supra), the sentence of imprisonment was reduced to the period already undergone, in a case where the accused was convicted under Section 161 of the Indian Penal Code.

9. In the instant case, the incident had taken place in 1975. The basic facts regarding the delay are quite akin to the facts of aforesaid cases. The appellant had undergone some part of the sentence and faced the trauma of criminal proceedings and prosecution for 25 years.

10. On careful analysis of the evidence on record leads to the conclusion that the appellant, Faizu is clearly guilty for the offence under sections 363 and 366 IPC. The learned ASJ has rightly convicted the appellant under sections 363 and 366 IPC. No interference is called for as far as conviction of the appellant is concerned. However, the appellant has been facing trial and prosecution for more than 25 years. He has already under gone part of the sentence, thereforee. On consideration of all the relevant facts and circumstances of this case, in my considered opinion the ends of justice shall be met by upholding the conviction of the appellant. However, the sentence of imprisonment of the appellant, Faizu is reduced to the period already undergone.

11. Consequently, the appeal is partly allowed and disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com