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Jagdish Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-13-1991

Reported in : 1992CriLJ2989; 1992(3)WLC597

Judge : Mohini Kapur, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 75, 149, 380, 454, 457 and 458

Appeal No. : S.B.C.R. No. 155 of 1990

Appellant : Jagdish

Respondent : State of Rajasthan

Advocate for Def. : K.N. Sharma, Public Prosecutor

Advocate for Pet/Ap. : Suresh Pareek, Adv.

Judgement :
ORDER

Mohini Kapur, J.

1. The petitioner has been convicted for the offences Under Sections 457, and 380, IPC read with Sections 75, IPC and sentenced as under by the Judicial Magistrate, Sawai Madhopur by his judgment dated 17th October, 1984:

Under Section 457 read with Section 75 IPC One year's Rigorous Imprisonment with a

fine of Rs. 100/- in default of payment of

fine to undergo one month S.I

Under Section 380 read with Section 75 IPC Six months R.I. with/fine of Rs. 50/-

and in default of payment of fine to further

undergo S.I. for 15 days.

The scope of revision is very limited and hence the facts shall be mentioned very briefly. One Kalu reported to Security Officer, Jaipur Udyog Limited, Sawai Madhopur that during his absence an alarm clock and Rs. 195/- were stolen and the Security Officer reported the matter to Police Station Sawai Madhopur where the case was registered. After investigation challan was put up and after trial the petitioner was found guilty of offences under Sections 380 and 457, IPC. This finding was recorded on 27-6-1983 and thereafter an additional charge Under Section 75, IPC was framed. The Additional charge was read over to the petitioner and he stated that his previous conviction had been set aside in appeal. In order to find out whether the petitioner had been convicted earlier the learned Magistrate recorded the evidence and thereafter came to the conclusion that the earlier conviction had been maintained in appeal for offence under; Section 454, IPC and the appeal had been accepted only so far as Section 75, IPC was concerned. This. time, therefore he sentenced the petitioner for offences under Sections 457 and 380, IPC with the aid of Section 75, IPC.

2. So far as oral evidence in the case is concerned, it has already been considered by the learned Sessions Judge and the charge of offences under Section 458 and 380, IPC stand proved against the petitioner.

3. The learned counsel for the petitioner: has contended that Section 75, IPC is applicable only when the previous conviction is under Chapter XII or Chapter XVII and the imprisonment awarded is for the term of three years or upwards. It is only

when both these conditions are satisfied that the accused would be liable to enhanced punishment as is provided in Section 75, IPC. His second contention is that the petitioner has been sentenced not for the substantive offence of Section 457, IPC and 380, IPC but with the aid of Section 75, IPC and when Section 75, IPC goes away as it is not applicable then no punishment could be awarded the accused petitioner should be acquitted of the offences Under Sections 457 and 380, IPC and should not be sentenced, by this court.

4. In the alternative it has been contended that the theft relates to a time-piece worth Rs. 60 and cash which is nominal and this occurred in the year 1978 and after that the petitioner is not involved in any case and he has also remained in custody for some time, he should be released on the period for which he has already remained in Jail.

5. The learned Public Prosecutor has supported the decision of the learned Magistrate and the learned Sessions Judge and contended that even if Section 75, IPC is not applicable then this court can sentence the petitioner for the offences under Section 457 and 380, IPC for which he has already been held to be guilty.

Section 75, IPC reads as under:

75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction whoever, having been convicted,--

(a) by a Court in India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards shall be guilty of any offence punishable under either of those with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then Section 75, IPC

would not be applicable. If any authority is required then reference may be made to In re Kamya, Accused appellant, AIR 1960 AP 490 : (1960 Cri LJ 1302), wherein it has been held that the minimum required for enhancement of punishment under Section 75, IPC is that the previous conviction of the accused should have resulted in punishment of three years or more. Here the petitioner in the previous case had been sentenced to six months imprisonment only for the offence under Section 454, IPC, thus he would not become liable to enhance punishment Under Section 75, IPC as the earlier sentence was not for three years or more.

The next question which arises is whether the petitioner can be sentenced for the offences Under Sections 457 and 380, IPC or he has to be acquitted because the Magistrate has sentenced him with the aid of Section 75, IPC.

6. Here it may be pointed out that Section 75, IPC is not an offence similar to Section 34, IPC or Section 149, IPC so as to say that when the conviction is with the aid of Section 75, IPC then punishment for the substantive offence cannot be awarded. Section 75, IPC is a provision which enables the court to pass an enhanced sentence against the accused, who has been sentenced on a previous occasion. If it is found that the conviction on the previous occasion is not proved or that the sentence on the previous occasion was not of three years or more then Section 75, IPC would not be applicable and it would mean that the accused is not liable to be punished with enhanced term of imprisonment. Non-applicability of Section 75, IPC has nothing to do with the proof or guilt of the main offence. If Section 75, IPC is found to be inapplicable then it would not mean that the finding of guilt for certain offences recorded by the Magistrate will also go away. The conviction for the offences would stand and the accused would be liable to be sentenced for the main offence and the sentence cannot be enhanced with the aid of Section 75, IPC. The contention of the learned counsel for the petitioner that the petitioner should be acquitted of the offences under Sections 457 and 380, IPC is not acceptable.

7. From the discussions in the judgment of the learned Magistrate about the previous conviction of the petitioner, it appears that the sentence in the previous

case was also with; the aid of Section 75, IPC and on appeal the conviction Under Section 75, IPC was set aside. This shows that there were two convictions before the present case. Normally such an offence should be dealt with strictly, but in the present case the incident occurred in the year 1978 and 13 years have rolled by; now and the petitioner is running a Parchuni shop. He has remained in Jail for about 85 days and when Section 75, IPC is not applicable then the period for which the petitioner has already remained in custody is considered to be adequate punishment for the offences Under Sections 457 and 380, IPC.

8. This revision petition is accepted as far as applicability of Section 75, IPC for the purposes of awarding sentence is concerned, it is held that he is not liable to enhanced penalty by virtue of Section 75, IPC. His conviction for offences under Section 457 and 380, IPC is maintained and the sentence already undergone by him is held to be adequate. However, he shall deposit a sum of Rs. 150/- for both the offences within a period of one month. In default of payment of this amount he shall under go simple imprisonment for 15 days.

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