

Balbir Vs. State of Rajasthan

Balbir Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/758557

Court : Rajasthan

Decided On : Feb-03-1975

Reported in : 1975WLN(UC)45

Judge : K.D. Sharama, J.

Appeal No. : S.B. Criminal (Jail) Appeal No. 674 of 1974

Appellant : Balbir

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

K.D. Sharama, J.

1. These two appeals-one represented and another from jail-field by Balbir arise out of the sane judgment of the learned Additional Boos Judge, Bharatpur, dated 21-9-1974, by which the appellant was convicted under Section 395, I.P.C. and sentenced to undergo rigorous imprisonment for four years and to a fine of Rs. 400/- in default of payment of fine to further suffer rigorous imprisonment for six months. As common questions of law and facts arise to the two appeals, they ate disposed of together by one judgment.

2. The prosecution case against the appellant was that he along with other co-accused, namely Zahoor, Deenu, Subhan Khan, Tendi alias Rateek & other persons stopped as many as 8 trucks loaded with goods going on the road between Kasi and Kama in the night between 27th and 28th December, 1970, at about 10 by placing stones across the road the appellant and his companions then robbed the occupants and the passengers of the trucks of their valuable properties at pistol point. After matting such loot they disappeared from there the first truck stopped by the appellant was No. UPU 3794 or 3594, the cleaner of which was Rishi Lal PW 10. A labourer also was sitting in it whose name was Subba PW 10. A first information report of this occurrence was made by Subha PW 10 the very night at 1.15 a.m. to the police at police station, Kama which lay at a distance of 3 miles from the place of occurrence the police registered a case of dacoity on the basis of the report and commenced investigation the appellant, was brought by the police from Haryana, where he was arrested by the local police in connection with a some other crime and was detained in Gurgaon Jail. He was admitted in Subjail, Deeg, on 27-5-1971. Thereafter on 29.6.71 he was put up in a test identification parade in the jail which was conducted by the tehsildar-cum II Class Mag. Parmeshwari Passad, PW 11. He was correctly identified to be one of the dacoity in the parade of identifying witnesses, namely, Daulatram PW 2, Narotem, Sonamal & Rishilal PW 1, who claimed to have been him taking active part in the commission of the dacoity. No property, however, could be recovered from the possession of the appellant. After collecting of the necessary evidence in the case, the police submitted a charge-sheet against the appellant along with other co-accused in the court of the Munsiff Magistrate, Deeg, under Sections 395 and 397, I.P.C. the learned Magistrate held an enquiry, preparatory to commitment, and upon finding a prima-facie case, committed the appellant along with there co-accused to the court of Sessions judge, Bharatpur, for trial, under Sections 395 and 397, I.P.C. the learned Sessions Judge tried the appellant and found him guilty for the offence punishable under Section 395, I.P.C. only. Aggrieved by his conviction and sentence the appellant has come up in appeal before this Court.

3. I have gone through the record and heard Mr. O.C Chatterji appearing on behalf of the appellant and Mr. G.A Khan, for the State the learned Counsel for the appellant has not challenged the validity of the appellant's conviction under

Section 395, I.P.C. before me. The only contention raised by him is that in view of the clear provisions of Section 428, Criminal Procedure Code, 1973, the period of detention undergone by the appellant during the investigation, enquiry or trial of this case before the date of his conviction by the trial Judge should be set off against the term of four years' rigorous imprisonment imposed upon him. In support of his above contention, the learned Counsel for the appellant relied upon a recent judgment of the Supreme Court of India in *B.P. Andre v. Supdt., Central Jail* AIR 1975 SC 164, wherein their Lordships were pleased to make the following observations:

Section 428 is absolute in its terms. It provides for the set off of the pre-conviction detention of an accused person against the term of imprisonment imposed on him on conviction, whatever be the term of imprisonment imposed & whatever be the factors taken into account by the Court while imposing the term of imprisonment. It does not say that where the pre-conviction detention of an accused person has already been taken into account by the Court while imposing the term of imprisonment on conviction, no set off of such pre conviction detention shall be permitted, and if the legislature has not introduced any such exception, we cannot read it in to the section by a process of judicial construction. To read such an exception in to the section would be to do violence to the language of the section and to read words which are not there. That is clearly impermissible according to well recognised canons of construction. It is quite understandable that the legislature has not introduced any such exception, because very often the factors which weigh with the court in imposing a particular term of imprisonment are not articulated and in many cases it would be a matter of speculation whether and to what extent the fact that an accused person was in detention prior to his conviction must have weighed with the Court in imposing a sentence of imprisonment.

Shri G.A. Khan, appearing on behalf of the State could not succeed in refuting the above contention put forward by the learned Counsel for the appellant.

4. I have considered the arguments advanced by the learned Counsel for the appellant. It will not be out of place to mention that there is ample evidence led by the prosecution on the record to prove the guilt of the appellant beyond reasonable

shadow of doubt. Upon careful review of the entire evidence, I am satisfied that the appellant was correctly identified by Daulat Ram, P.W. 2, and Sohan Lal P.W. 3 in the test identification parade and thereafter in the trial court to be one of the dacoits who robbed them off their belongings the evidence of these witnesses was rightly believed by the trial Judge for reasons mentioned in the judgment, which I need not reproduce here Nothing has been elicited from the cross examination of these witnesses which may destroy the value of their evidence or impeach their credit. Consequently, no interference with the findings of the trial Judge as to the guilt of the appellant is called for.

5. As regards the sentence of four years' rigorous imprisonment and a fine of Rs. 400/-, in default six months' further rigorous imprisonment awarded by the trial Judge, it may be observed that it is not severe in the circumstances of the case. It is, therefore, maintained. However, there is no escape from the conclusion that the provisions of Section 428 of the Code of Criminal Procedure, 1973, provide for the setting off of the period of detention undergone by the appellant during investigation, inquiry or trial of this case before the date of his conviction and that his liability to undergo imprisonment on his conviction shall be restricted to the remainder of the term of imprisonment imposed on him. In the present case, it appears from the record that the appellant was taken into custody in this case by Atma Ram A.S.I. Police Station, Kama, from Gurgaon Jail on 26-5-1971 at 6 p.m. and was admitted to the Sub-Jail, Deeg, on 27-5-1971, at 12-15 p.m. Since then he was kept in detention till the date of his conviction, i.e. 21-9-1974 Thus, the period of detention undergone by him during investigation, inquiry or trial of this case before the date of his conviction shall be set off against the term of four years' rigorous imprisonment imposed upon him upon his conviction by the Additional Sessions Judge, Bharatpur. If the amount of fine is not paid, the appellant shall, however, undergo imprisonment for six months.

6. In the result, both the appeals fail and are hereby dismissed with the above direction under Section 428 of the Code of Criminal Procedure regarding setting off of the period of detention against the sentence of Imprisonment imposed on the appellant by the trial Judge. The accused may be informed through the jail authorities concerned.

