

Bherulal Vs. State of Rajasthan

Bherulal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/760748

Court : Rajasthan

Decided On : Dec-13-1990

Reported in : 1990(2)WLN580

Judge : Y.R. Meena, J.

Appeal No. : S.B. Cri. Revi. Peti. No. 111 of 1981

Appellant : Bherulal

Respondent : State of Rajasthan

Judgement :

Y.R. Meena, J.

1. This revision petition is directed against the judgment of Additional Sessions Judge, Udaipur dated 12.3.81. Learned Additional Sessions Judge has convicted the accused petitioner Under Section 332 IPC and sustained the sentence for one month and fine of Rs. 100/-, in default further undergo one month's simple imprisonment.

2. Facts in brief are that one Kishanlal Arora lodged an FIR on 2-1-73 at 8.30 p.m. stating that at 7.15 p.m. when to raid the house of Manoharlal, accused Bherulal came with a lathi and struck a blow on Excise Constable Bhursingh and deterred them from search. Consequently, search could not be made. During trial,

Mohansingh, Virbalsingh, Narharsingh, Kesarsingh, Bhursingh and Keshavlal were examined on the point of incident, Dr. Baxi on the point of injury. After examining the prosecution witnesses, learned Additional Munsif & Judicial Magistrate, Udaipur acquitted Manoharlal, however, he found Bherulal guilty Under Section 332. He convicted him Under Section 332 and sentenced three months, rigorous imprisonment and fine of Rs. 100/-, in default of payment of fine, further undergo one month's simple imprisonment. Being aggrieved, accused Bherulal filed appeal in the Court of Additional Sessions Judge, Udaipur. Learned Additional Sessions Judge upheld the conviction, however, he reduced the sentence from three months to one month and sustained the amount of fine. Being aggrieved, accused petitioner came in revision before this Court.

3. Submissions of learned Counsel for the accused petitioner Shri Kamal Dave were that the prosecution witnesses are police constables or employees of excise department, no legal aid was provided to the accused, no identification parade was conducted during the trial, main accused Manoharlal Was acquitted. His last submission was that alternatively the benefit of probation should be given to the accused petitioner Under Sections 360 & 361 of the Cr. P.C. In support of his claim he relied on decisions of Rajasthan Height Court reported in 1986 RCC 413, 1980 RCC 146 and 1980 RCC 80. On the other hand, learned Public Prosecutor Shri K.L. Thakur relied on the judgment of the authorities below.

4. In Ram Avtar and Ors. v. State of Rajasthan 1986 RCC 413 similar issue was considered by this Court. This court has considered the observations of Their Lordships of the Supreme Court in the case of Bishnu Deo Shaw v. State of West Bengal : 1979 CriLJ841 and following that the benefit of probation was allowed. The view taken by this Court in Sunder and Ors. v. State of Rajasthan and Dhanna and Ors. v. State of Rajasthan RCC 1982 Vol 7 page 80 was also taken in to account. For ready reference, the observations of their Lordships of the Supreme Court in the case of Bishnu Deo Shaw (Supra) are reproduced as under:

Apart from Section 354(3), there is another provision in the Code which also uses the significant expression 'special reasons It is Section 361, Section 360 of the 1973 Code re-enacts, in substance. Section 362 of the 1898 Code and provides

for the release on probation of good conduct or after admonition and person not under twenty one years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or any person under twenty years of age or any woman who is convicted to an offence not punishable with death or imprisonment for life, if no previous offence is proved against the offender, and if it appears to Court, having regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct or after admonition. If the Court refrains from dealing Probation of Offenders Act or any other law for the treatment, training or rehabilitation of youthful offenders, where the court count have done so, Section 361, which is a new provision in the 1973 Code makes it mandatory for the Court to record in its judgment the 'special reasons' for not doing so. S 361 thus obits a duty upon the Court to apply the provisions of Section 360 wherever it is possible to do so and to State 'special reasons' if it does not do so. In the context of Section 360 the 'special reasons' contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, charter and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders, and not mere deterrence are now among the foremost object of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. We will not, therefore, be wrong In assuming that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors.

5. Following the view taken by their Lordships in the case of Bishnu Deo Shaw (Spupra) I am of the opinion that this is a fit case where the benefit of probation Under Sections 360 and 361 of the Code of Criminal Procedure, 1973 can be given to the accused petitioner.

6. In the result, the revision petition is partly accepted. While maintaining the conviction of the accused petitioner for the offence for which he was convicted, it is hereby ordered that the accused petitioner shall be released on probation if he furnishes a personal bond in a sum of Rs. 5000/- and a surety in the like amount to the satisfaction of the learned trial Court to keep peace and be of good behavior for a period of one year and to appear and receive sentence if the condition of the bond is not fulfilled. The bond and the surety should be furnished in the trial Court within a period of two months from today.

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