

Deenu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-13-1988

Reported in : 1988WLN(UC)187

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Cr. Revision Petition No. 136 of 1988

Appellant : Deenu

Respondent : State of Rajasthan

Judgement :

Vinod Shanker Dave, J.

1. The petitioner has been convicted for offences under Sections 457 and 380 IPC and sentenced to six months' rigorous imprisonment and a fine of Rs. 100/- on each count and in default of payment of fine, he was directed to further undergo one month's rigorous imprisonment by the learned Additional Sessions Judge, Kishangarhbas who had partly allowed the appeal and had reduced the substantive sentence of two years' rigorous imprisonment on each count imposed by the Munsif and Judicial Magistrate, Kishangarhbas.

2. The charge against the petitioner was that on the night intervening 8th and 9th October, 1977, he had opened the shutter of a hotel (small Restaurant) and one

more adjoining shop and removed some goods. He was apprehended on the spot and certain goods were recovered from him.

3. I need not narrate the detailed story and discuss the facts of the case as the conviction has not been challenged before me and in my opinion rightly so since there is concurrent finding of fact. The only prayer made is that the accused should have been dealt with under the provisions of Probation of Offenders Act. The learned Public Prosecutor has no objection if the accused is dealt with under the provisions of Probation of Offenders Act.

4. At the out-set I may observe that the offence has been committed in the year 1977 and this revision petition come after 11 years of the occurrence before this court. Thus the accused has faced the proceedings in both the courts for more than 10 years and that is one of the consideration which ought to have been taken note of by the courts below while considering the question of sentence. Sentencing of the accused is always an important part of the case and several facts have to be taken note of as is also the intention of the legislature. Since after incorporation of Section 360 and 361 Cr PC a duty has been cast upon the courts to give more weight to the correctional theory in penology and keeping that in view the nature of the offence character of the offender, circumstances in which the theft has been committed, circumstances intervening in between, the pendency of the case, previous conduct of the offender and his conduct during the course of trial are relevant factors. Nothing has been considered by the courts below and the benefit has been mechanically refused which is not proper compliance of Section 361 Cr.PC. Offence under Section 380 IPC is punishable with an imprisonment for 7 years and offence under Section 457 IPC is punishable for imprisonment up to 5 years. There fore, in both the cases sentence imposed cannot be more than 7 years in all and according to Section 360 Cr.PC it is obligatory for the court to extend the benefit unless the proper reasoning has been recorded for not doing is under Section 361 Cr.PC. This court has repeatedly said so in several cases but it is regrettable that the case law laid down by the Supreme Court and this court in scores of judgment has not been brought to the notice of learned trial Judges or they themselves are unmindful of the law. In this case there are compelling reasons for considering his case under Section 360, Cr.PC., particularly because

neither previous conviction has been attributed to him nor it has been brought to the knowledge of the court that any offence has been committed by him during the pendency of the trial which lasted for 10 years and in these ten years it can well be imagined how much mental, physical and economical stress must have been there on the accused who belongs to a different State.

5. Be that as it may, in the instant case I am of the opinion that it is a fit case where the accused should be extended the benefit of Section 360 Cr.PC. Consequently the revision petition is partly allowed. Conviction of the petitioner is maintained but instead of sentence it is directed that the petitioner shall be released forthwith on his executing a bond in the sum of Rs. 2000/- with One surety in the like amount to the satisfaction of the trial court for keeping peace and be of good behaviour for a period of two years.

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