

Laxman Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-18-1994

Reported in : 1994(1)WLC416; 1994(1)WLN552

Judge : V.S. Dave, J.

Appeal No. : S.B. Criminal Revision Petition No. 20 of 1994

Appellant : Laxman

Respondent : State of Rajasthan

Judgement :

V.S. Dave, J.

1. This revision petition is directed against the judgment, dated 20.12.93 passed by learned Addl. Sessions Judge No. 2, Bharatpur confirming the judgment of Adl. Munsiff and Judicial Magistrate No. 2, Bharatpur convicting the accused-petitioner for offence under Sections 380 and 457 IPC and sentencing him to undergo simple imprisonment for one year on each count and to pay a fine of Rs. 100/- on each count and in default of payment of fine to further undergo simple imprisonment of 15 days. Sentences were directed to run concurrently.

2. The accused-petitioner was charged for committing a theft of a she-buffalo on the intervening night of 18th and 19th Feb., 1985 which was seized from him soon

after the theft was committed. The prosecution's case was that he was accompanied by one more person who made escape good his and could not be apprehended thereafter. Police after investigation submitted charge-sheet against the petitioner. He was tried for offence under Sections 457 and 380 IPC. The prosecution examined four witnesses in support of its case. The accused denied the occurrence. He was however, convicted and sentenced as indicated above. An unsuccessful appeal was filed by him.

3. Learned Counsel for the petitioner wanted to assail the judgments of the courts below and finding it difficult on merits, submitted that the case of the petitioner should be considered under the provisions of Section 360 Cr.P.C. and in my opinion he rightly conceded on merits, since there is concurrent finding of fact that he was one of the two persons who had removed the she buffalo.

4. This occurrence took place in 1985 and nine years since thereafter have elapsed. The accused-petitioner is facing trial all these years and there is nothing on record to indicate that he had been found guilty of any offence prior to this or subsequently he might have indulged in any criminal case. Admittedly there was one more person with him who had run away and, therefore, the case of the petitioner has to be considered from a different point of view also. It may be observed here that the trial court very casually considered the case under Section 360 Cr.P.C. and proper reasons as required under Section 361 Cr.P.C. have not been assigned. The appellate court did not address itself on this aspect of the matter which was also essential for him. The provisions of Section 360 Cr.P.C. as well as the Probation of Offenders Act are to be respected and the observations made by this Court in several cases including the one reported in *Deenu v. State* 1988 (1) RLW 363 are more ignored than followed and in view of the fact that a long time has elapsed between the occurrence and the accused- petitioner had already been in jail for about 56 days, I deem it proper to extend him the benefit of Section 360 Cr.P.C.

5. The revision petition is partly allowed, and it is directed that the accused-petitioner shall be released on his executing a personal bond in the sum of Rs. 2000/- to the satisfaction of the trial court, for keeping peace and be of good

behavior for a period of one year.

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