

Sunit @ Bobi Vs. State

Sunit @ Bobi Vs. State

SooperKanoon Citation : sooperkanoon.com/768979

Court : Rajasthan

Decided On : Sep-21-2005

Reported in : RLW2006(1)Raj226

Judge : N.K. Jain, J.

Acts : Indian Penal Code (IPC) - Sections 377

Appeal No. : S.B. Cr. Revision Petition No. 830 of 2004

Appellant : Sunit @ Bobi

Respondent : State

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

Advocate for Pet/Ap. : H.S. Bikarwar, Adv.

Judgement :

N.K. Jain, J.

1. Heard the learned Counsel for the petitioner and the learned Public Prosecutor and examined and impugned judgments as well as record of both the Courts below.

2. Before arguing the case, the learned Counsel for the petitioner contended that he does not want to press this revision petition on merits and his prayer is only to

reduce the sentence awarded by the courts below to a period already undergone by the accused petitioner.

3. The petitioner was convicted and sentenced by Additional Chief Judicial Magistrate No. 2, Bharatpur under Section 377 IPC to five years rigorous imprisonment and a Fine of Rs. 6,000/-, in default of payment of fine to further undergo three months simple imprisonment. It was also ordered that out of Rs. 6,000/-, Rs. 5,000/- will be paid to the father of injured Roop Singh towards compensation.

4. Being aggrieved with the same, the petitioner filed an appeal which was partly allowed by Additional Sessions Judge No. 2 judgment dated 25th June, 2004. The Additional Sessions Judge maintained the conviction of the accused petitioner but reduced the sentence from five years to two years rigorous imprisonment. The amount of fine was also reduced from Rs. 6,000/- to Rs. 1,000/-, in default of payment of fine, to further undergo six months simple imprisonment. Being aggrieved with the same, the petitioner has filed this revision petition.

5. As stated above, the petitioner has not challenged the conviction and his limited prayer is only to reduce the sentence. The counsel for the petitioner contended that this is a matter relating to the year 1994 and he has already suffered a mental agony for last eleven years. He further contended that after dismissal of the appeal of the petitioner by Additional Sessions Judge No. 2 Bharatpur vide judgment dated 25th June 2004, he preferred this revision petition alongwith application for suspension of sentence but this Court dismissed the application for suspension of sentence twice. Therefore, since the date of judgment of the first appellate Court i.e. 25th June 2004, the petitioner is in Jail for last about 15 months. He further submitted that he remained in custody for some months during investigation/trial of the case till he was enlarged on bail.

6. The learned Public Prosecutor submits that in case sentence of imprisonment is reduced then at least amount of fine may be enhanced and victim may be compensated.

7. I have considered the rival submissions and examined the impugned judgments as well as record of the Trial Court.

8. There is no dispute that petitioner is facing trial since last 11 years and he is in continuous custody since 25th June 2004. Therefore, he has already undergone for a period of one year and three months. He also remained for some time in custody during investigation/trial of the case.

9. After considering me submission of learned Counsel for the petitioner and other facts and circumstances of the case, I am of the opinion that ends of justice would meet, in case the sentence of Imprisonment is reduced to a period already undergone by the petitioner and amount of fine is increased from Rs. 7,000/- to Rs. 6,000/-.

10. Consequently, the revision petition is partly allowed, the conviction of the petitioner is maintained. The sentence of imprisonment is reduced to a period of imprisonment already undergone by the petitioner. However, the amount of fine is enhanced from Rs. 1,000/- to Rs. 6,000/- Three weeks' time is allowed to deposit the amount of fine of Rs. 6,000/- in case the same was not deposited after judgment of Trial Court. Out of this amount a sum of Rs. 5,000/- will be paid to victim or to his father, for which, a notice will be given by the Trial Court to victim or to his father to receive the amount. In case the petitioner fails to deposit the amount of fine as directed above within a period of three weeks then the petitioner will have to undergo simple imprisonment for one month. The petitioner may be released forthwith in case he is not required in any other case.