

Jawahar Vs. the State

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Court : Kolkata

Decided On : Dec-19-1994

Reported in : 1995(2)ALT(Cri)8,(1995)1CALLT194(HC)

Judge : Sidheswar Narayan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 454; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360 and 361; ;Probation of Offender Act, 1958 - Sections 4 and 6

Appeal No. : Crl. Rev. No. 5 of 1994

Appellant : Jawahar

Respondent : The State

Advocate for Def. : R.S. Saroop, Adv.

Advocate for Pet/Ap. : H.R. Bahadur, Adv.

Judgement :

Sidheswar Narayan, J.

1. This petition in revision is directed against the judgement and order dated 28th October, 1994 passed by Shri S.K. Ray, Sessions Judge, A & N Islands, Port Blair in Criminal Appeal No. 7 of 1994 whereby the Order of conviction and sentence

passed by Shri S.K. Haldar, Judicial Magistrate First Class (II), at Port Blair in G.R. Case No. 1072 of 1991 was upheld. The petitioner, having been found guilty of the offence under section 454 IPC, has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default to undergo rigorous imprisonment for one month more.

2. The prosecution case, put in a short compass, was that on 4.9.1991 at about 11 AM the informant, namely, S.K. Krishnan, while passing by the side of his rented accommodation, noticed that some portion of its door had been slightly opened. Thereupon, he could noticed the presence of the petitioner inside the said room. The petitioner was thereafter caught hold at the spot by the informant with the help of some other witnesses, and, thereupon, the petitioner disclosed his name as Jawahar. The petitioner was thereafter brought to the police station and was handed over to the police.

3. Since the guilt of the petitioner under Section 454 IPC has been established by a concurrent finding of the fact by the trial court as well as the Appellate court, I find practically no scope for interference therein. Shri Hemraj Bahadur, the learned counsel appearing on behalf of the petitioner urged before me that even assuming the prosecution story to be true, no offence under Section 454 IPC was made out by the prosecution on the facts as alleged. I, however, find myself unable to accept the contention inasmuch as, the learned appellate court while expressing agreement with the finding of the trial court has correctly observed that the petitioner had stealthily entered into the watch-repairing-shop-in-question with intent to commit theft. The room, where the petitioner was found and caught hold, was in joint occupation of the informant S.K. Krishnan and one Veeraswamy and the same was used as a watch repairing shop. The petitioner has been held guilt of having entered into the shop while managing to expand one of the jhaps of the door. The room was then closed by putting lock and key therein. The lock was of-course not break-opened but the petitioner is said to have entered into it through loose portion of the jhap after taking all precaution to conceal his entry therein. That being as such, I find no valid ground to interfere with the concurrent finding of the trial court and the appellate court while convicting the petitioner under Section 454 IPC.

4. There was, of course, a pertinent question raised before me with regard to the order of sentence passed against the petitioner. The learned counsel appearing on behalf of the petitioner urged before me that the petitioner has been deprived of the beneficent provision of law which was available to him under Section 4 read with Section 6 of the Probation of Offenders Act 1958 and Section 360 of the Cr. P.C. In this context, I, however, find that the trial court did apply his mind whether the petitioner should be given advantage of Probation of Offenders Act and Section 360 of the Cr. P.C. and, thereupon, taking re-course of Section 361 of Cr. P.C. he has assigned some reason for having not done so. The relevant portion of the judgement and order of the trial court can be quoted as follow :

'Heard the accused on the point of sentence. The accused prays for mercy.

I have already found that the accused entered into the watch repairing shop of Veeraswamy in his temporary absence from there. The accused is so dare to enter into the shop which was under lock and key. In view of the fact, I find that the accused should not be given the benefit of Probation of Offenders Act or under Section 360 of the Cr. P.C. Considering the age of the accused as well as the age of the case and considering the gravity of the offence, I find that the sentence mentioned below will meet ends of justice'.

5. In order to appreciate the aforesaid portion of the judgement of the trial court I would prefer to mention as to what Section 6 of the Probation of Offenders Act provide S. It provides that :

'6. Restriction on imprisonment of offenders under twenty-one years of age.-(1)

When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the court passes any sentence or imprisonment on the offender, it shall record its reason for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in sub-section (1), the court shall call for a report from the Probation Officer and consider the report, if any, and any other information, available to it relating to the character and physical and mental condition of the offender'.

6. In the instant case the petitioner was aged below 21 years inasmuch as the trial court while examining the petitioner on 13-1-94 under Section 313 of the Cr. P.C, recorded his age as 20 years, vide endorsement at the top of such record prior to the recording of the verbatim of the petitioner. The petitioner was thus a little less than 18 years on the date of commission of offence i.e. on 4.9.1991. The case of the petitioner thus definitely falls within the purview of the Section 6 of the Probation of Offenders Act and section 360 of the Cr. P.C. But, for the reasons as recorded by the trial court (mentioned above), the benefit as provided under this beneficent legislation was not given.

7. The sole reason which weighed with the trial court for not granting the benefit of provision of Probation of Offenders Act as noticed above was only this much that the petitioner was so dare to enter into the watch repairing shop which was under lock and key. I do not think, this alone could be a valid and reasonable ground so as to deprive the petitioner of the aforesaid benefit. There was nothing adverse with regard to the character of the petitioner before the trial court. There was not a word expressed in the judgement of the trial court or the appellate court that there was any antecedent report against the petitioner, which stood in the way of admitting him to the benefit as claimed. I have a citation before me as : 1983 CriLJ1043 wherein the accused being 20 years of age had been convicted under Section 452 and 397 of the IPC and had been sentenced to 7 years imprisonment. A report of the Probation Officer indicated that the accused belonged to a middle class respectable family but has fallen into undesirable company and has undergone evil influence of movie which accentuated the dormant criminal propensity in him. In this case the Supreme Court held that the accused was entitled to the benefit of Section 6 of the Probation of Offenders Act.

8. It is well to notice here that, in the above cited case, though there was an adverse report against the accused having fallen in undesirable company and also having gone under evil influence of movie, the benefit of probations was given to him by the Supreme Court. In the instant case I, however, find from the judgement of the trial court as also that of the appellate court that there was no adverse report before them against the petitioner. Simply because the petitioner has acted in a daring manner to enter into the shop, which was under lock and key, I do not think it would be desirable to condemn him to rigorous imprisonment for one year. There were some other noticeable aspects of the case, such as (i) the petitioner was aged only about 18 years on the date of the commission of offence, (ii) the occurrence took place in the light of day, (iii) the door of the shop was so loose that one could manage one's entry without breaking open the lock and key and (iv) there was no theft actually committed. Thus I find it to be a fit case in which the benefit of Section 6 of the Probation of Offenders Act can be provided to the petitioner in accordance with the provisions of Section 360(4) of the Cr. P.C.

9. I would, therefore, like to suspend the sentence imposed against the petitioner and direct that he be released on his entering into a bond of Rs. 3000/- with two sureties of like amount each, one of the sureties being his father or near blood relation for a period of two years from the date he enters into a bond and to appear and receive sentence when called upon during such period and, in the meantime, he keeps the peace and be of good behaviour. The bond as above shall be furnished before the trial court within a month from this order. The Probation Officer of the concerned area .must keep supervision over the petitioner during the aforesaid period and submit half yearly report before the trial court.

10. The instant revision petition thus succeeds to the extent of modification in the order of sentence as indicated above and accordingly, it is disposed of.