

(1990) 08 RAJ CK 0045

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 67 of 1989

Gordhan and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 28-08-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, 361
Penal Code, 1860 (IPC) — Section 379
Probation of Offenders Act, 1958 — Section 3, 4

Citation : (1990) 1 RLW 414 : (1991) 1 WLN 400

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—This revision petition has been filed against the judgment of the learned Sessions Judge, Bundi passed on 9th March, 1989 in Criminal Appeal No. 2/87 by which he maintained the conviction and sentences of the petitioners u/s 379 IPC to one year simple imprisonment and a fine of Rs. 250/- each.

2. The facts of the case are that a case u/s 379 IPC was registered at Police Station Bundi on 15th May, 1977 on the report of one Nand Kishore of Kota. In the said report, it was alleged that his cousin brother, along with his wife and the wife of younger brother were going to Udaipur in a night bus then some persons took away their two boxes, which were placed on the roof of the bus. After registering the case, Police recovered the articles from the possession of the accuse on their information and after completion of the investigation, submitted a charge- sheet against the petitioners and one co-accused Dana Ram.

3. During trial, prosecution examined as many as 21 witnesses. No witness was examined in defence. The learned Additional Munsif and Judicial Magistrate No. 1, Bundi after completion of the trial, found the petitioners guilty for the offence u/s 379 IPC. The learned Magistrate, there after, convicted the petitioners u/s 379 IPC and sentenced to each of them to undergo simple imprisonment for one year and to pay a fine of Rs. 250/-. In default of payment of fine, each of the

petitioners was to undergo further simple imprisonment for one month. The co-accused Dana Ram died during the pendency of the trial as such the proceedings against him were dropped. So far as the recovered articles are concerned, they were directed to be given to Smt. Urmila and Smt. Mala Choudhary vide judgment dated 31st March, 1987.

4. An appeal was preferred by the accused-petitioners against their conviction and sentence passed by the learned Magistrate and the same was heard and disposed of by the learned Addl. Sessions Judge, Bundi. The conviction and sentences of the petitioners and dismissed the appeal vide judgment dated 9th March, 1989. Hence, this revision petition has been preferred by the accused petitioners.

5. I need not discuss the evidence as the learned Counsel for the petitioners has frankly and rightly admitted that he cannot challenge the conviction of the petitioners u/s 379 IPC as there is a concurrent finding of both the courts below. I have also gone through the judgments of both the learned courts below and I do not find any infirmity in the judgment as both the courts below have minutely discussed and appreciated the evidence. Therefore, I am of the view that the conviction of the petitioners u/s 379 IPC has been correctly recorded by the trial Magistrate and correctly affirmed by the learned Sessions Judge.

6. The main thrust of the learned Counsel for the petitioner is that the incident is of the year 1977 and 13 years have already passed since then. He further submits that there is nothing on record to show that any of the petitioners has any bad antecedent or previous conviction to his dis-credit. He further submits that each of the petitioners has already remained in custody for more than three weeks and that it will not be in the interest of justice to send the petitioners again behind the bar. He further submits that there is nothing on record to debar any of the petitioners from getting the benefit of probation and keeping in view the modern trend of the courts below as well as the mandatory provisions contained u/s 361 Cr. P.C. the petitioners should be given the benefit of probation either u/s 4 of the Probation of Offenders Act or u/s 360 Cr.P.C.

7. The learned Public Prosecutor did not seriously oppose in granting probation to the petitioners. However, the contention of the learned Public Prosecutor is that some condition should be imposed on them in order to check their activities.

8. I have given my thoughtful consideration on the rival contentions made by the learned Counsel for the petitioners as well as the learned Public Prosecutor. As already stated above, the incident is of the year 1977 and more than 13 years have passed since then. It is also not disputed that the petitioners have faced protracted trial for about 10 years then they had prosecuted their appeal for next three years before they approached this Courts. Pendency of criminal proceedings for such a long period is bound to cause serious mental agony and torture, besides physical inconvenience and great monetary loss. It is also noteworthy that after upholding their conviction and sentences by the learned

Additional Sessions Judge, Bundi, the sentences of the petitioners were suspended on 14th March, 1989 and they have remained in jail from 9-3-89 to 25-3-89. They have also remained in jail for some time during the investigation of the case.

9. In a long period of 13 years, several leafs of the life are changed and if the accused-petitioners are sent to jail after 13 years, it will definitely unsettle not their life but the life of their other family members, who are dependent on them. Besides this, there is nothing on record to suggest that any of, the petitioners is either a previous convict or otherwise not entitled to get the benefit of probation. The learned trial Court has declined the benefit of the probation to the petitioners on the ground that the owners have been deprived from their clothes etc., which are usable in their routine life/ for a long period by the act of the accused-petitioners and that keeping in view the manner the theft was committed by them they were not entitled to get the benefit. The learned lower appellate Court declined the benefit of probation to the petitioners on the ground that they belong to "Kanjher" community and the members of this community are engaged in commission of theft.

10. With due respects, the grounds given by both the learned courts below are wholly irrelevant for declining the benefit of probation to the petitioners. Simply because the petitioners belong to "Kanjher" community, it can hardly be a ground to decline the benefit of probation when there is nothing on record to show that anyone of them is either a previous convict or has any bad antecedents. On the ground of a particular community, no person can be declined the benefit of probation otherwise it amounts to discrimination. The petitioners have been convicted u/s 379 IPC and u/s 3 of the Probation of Offenders Act, they can be released even after admonition. However, taking in to consideration all the facts and circumstances of the case, including the nature of the offence and the character of the offenders, I am of the view that it is expedient to release all the four petitioners on probation of good conduct, instead of sentencing them at once to any punishment.

11. Consequently, I partly allow this revision petition, while maintaining the conviction of the petitioners u/s 379 IPC, I think it proper to grant benefit of probation to the petitioners. It is, therefore, directed that the petitioners Gordhan, Sagar Kapuria and Chouthmal shall be released on probation on their entering in to a bond in the sum of Rs. 5000/- with one surety of the like amount with the stipulation appear and receive sentence whenever called upon to do so during a period of two years and in the meantime to keep peace and be of good behaviour. The bond shall be submitted with in a period of two months in the trial Court. In case the petitioners fail to submit the requisite bonds, the learned trial Court shall take steps for the arrest to under go the remaining sentence.

12. In this connection I also feel it proper that a copy of the said order should be sent to the District Probation Officer, Bundi with a direction that he should obtain a report about the conduct of the petitioners after every three months and in

case they are found violating the conditions of the bail bonds, steps should be taken against them in accordance with law.