
(1966) 11 DEL CK 0015

In the Delhi High Court

Case No : Criminal Revision Appeal No. 86D of 1966

Kalu Ram

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 08-11-1966

Acts Referred:

Citation : (1967) 3 DLT 161

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : R.K. Makhija and Nanak Chand, for the Appellant;

Judgement

Dua, J.

(1) Kalu Ram the accused-petitioner was convicted by Shri Permanand Gupta, Magistrate 1st Class, Delhi, on 21.12.1965 u/s 380, Indian Penal Code, for having committed theft at the premises of the Irwin Hospital, New Delhi, by removing coins dishonestly from the public telephone call booth and sentenced to rigorous imprisonment for one year. On appeal this conviction was upheld by the learned Additional Sessions Judge but the sentence reduced to rigorous imprisonment for three months. On revision in this Court, a learned Single Judge while admitting the revision, ordered release of the petitioner on bail to the satisfaction of the District Magistrate. I am informed by counsel at the bar that the petitioner has undergone rigorous imprisonment for one month.

(2) The facts relating to the present case are that on 3-6-1965, the petitioner was seen at about noon time removing coins with the help of a piece of wire from the public telephone call booth installed in the Irwin Hospital building. New Delhi, Iswar Dass Chowkidar, who was on duty, saw the accused removing the coins and challenged him with the help of some to her persons and indeed succeeded in apprehending him. This story is supported by Ishwar Das P. W. 1 who was the Chowkidar on duty and who gave the entire story in Court with sufficient clarity. His cross-examination, though lengthy, has not elicited anything which would

discredit his testimony. It was of course put to this witness that there had been some controversy between him and the accused, the suggestion being that he had got annoyed with the accused, but it was categorically denied by the witness. Surinder Nath Public Witness .2. has corroborated the evidence of P.W.I. So has Inder Nath P. W. 3. It is also in evidence that when the accused was sought to be apprehended, he tried to escape but was caught by a police constable who was coming from the opposite direction. The cross-examination of Surinder Nath Public Witness . 2 has also failed to elicit anything derogatory to his credibility. The learned counsel for the petitioner tried to make capital out of non-production of the police constable who is stated to have caught the accused when he was trying to escape, but, in my opinion, his non-production is wholly immaterial because the real witnesses to the actual theft are Ishwar Das Public Witness .I, Surinder Nath Public Witness .2 and Inder Nath Public Witness .3. The police constable could only have deposed about the fact of getting hold of the accused when he was trying to escape. Non-production of this witness, Therefore, does not by any means affect the prosecution case for theft of coins for which the accused-petitioner has been convicted. Bhola Ram Public Witness . 4 has proved the recovery of Exhibits P. I to P. 3 and also preparation of the site plan and Dr. S.S. Kaushal P.W. 5 lodged the report regarding the theft in question. The evidence which is believed by both the learned Magistrate and the learned Additional Sessions Judge is unimpeachable and it has completely brought home to the accused the offence of theft charged.

(3) The learned counsel for the petitioner has also challenged the conviction of his client by submitting that the provisions of section 342 of the Code of Criminal Procedure have not been complied with in as much as he has not been questioned about the factum of his attempting to run away, but this again, in my opinion, is of no consequence because it is the positive and affirmative evidence of the eyewitnesses which completely establishes the guilt of the accused beyond any possibility of a reasonable doubt. The circumstance of his attempting to escape and of his being caught is merely an additional factor on which it is unnecessary to rely for the purpose of founding the guilt of the petitioner u/s 380, Indian Penal Code.

(4) The learned counsel has finally appealed to me that the accused who is a young boy of immature age should not be sent back to jail. I have seen the accused in Court and I find that he does look to be a young boy of not very mature age and the counsel for both sides agreed with this impression I may, however, point out that the learned Magistrate did not care to note either the age of the accused or his occupation in the record, not even when he examined the accused after the close of the prosecution evidence. This does reflect somewhat casual way of dealing with the case on the part of the learned Magistrate which does not commend itself to this Court. Even the learned Additional Sessions Judge does not seem to have recorded what his estimate of the age of the accused is, though the lower Appellate Court did reduce the sentence imposed on the accused, in view of his age. Normally, I am not inclined to send persons of

young age to jail and particularly when they are released on bail by this Court at the time of admission of criminal appeals or revisions except when the sentence undergone is grossly inadequate. In the present case, the sentence imposed by the lower Appellate Court was of rigorous imprisonment for three months and the accused has already suffered rigorous imprisonment for one month. The sentence served however, is certainly not quite adequate but I am unable to hold that it is so grossly inadequate that I must send him back to jail. I, however, feel that it would meet the ends of justice if instead of upholding the sentence of rigorous imprisonment of three months, I reduce the sentence of rigorous imprisonment to that already undergone and Along with it impose a fine of Rs. 30.00. I am not unmindful of the growing tendency amongst the young men in Delhi to develop criminal propensities, but for checking this, the more desirable course is to educate them on right lines and this duty is cast both on the parents and on the school teachers. The accused, I am informed has read up to 6th class. Deterrent effect of punishment imposed by the Courts has, of course, its due place in our Jurisprudence but at the same time State prisons cannot be considered to be ideal places for reformation of young people. Learned counsel for the State has of course suggested action under the Probation of Offenders Act No 20 of 1958, but on the facts and circumstances of this case. I do not think it is desirable to send the case back to the Court below for action under that Act. I am informed that the father of the accused is a very old man and the accused himself is employed in the Delhi Transport Undertaking. I, however, do hope that this young man would learn a lesson from the present conviction and would behave in future as a worthy citizen of this Republic.

(5) For all the foregoing reasons, I allow this revision in part and reducing the sentence of imprisonment from three months to that already undergone, I impose a fine of Rs. 30.00 which should be paid within a period of two weeks from today. In default of payment of fine, the accused-petitioner shall undergo rigorous imprisonment for two weeks. The record should be sent to the Court below for compliance without unreasonable delay.