
(2010) 03 RAJ CK 0086
In the Rajasthan High Court

Raju Singh @ Raju and Another

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 380, 411, 457

Citation : (2010) 03 RAJ CK 0086

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Judgement

Dinesh Maheshwari, J.—This revision petition is directed against the judgment and order dated 16.12.1994, as passed by the learned Sessions Judge, Jaisalmer in Criminal Appeal No. 3/1994 whereby the learned Appellate Judge dismissed the appeal preferred by the accused-petitioners and affirmed the judgment and order dated 18.02.1994, as passed by the Chief Judicial Magistrate, Jaisalmer in Criminal Case No. 87/1987, convicting the accused-petitioners for the offence u/s 411 IPC and sentencing each of them to simple imprisonment for 3 months.

2. The accused-petitioners were tried for the offences under Sections 457 and 380 IPC, when the charge-sheet was filed after investigation on the FIR lodged by Lekh Raj (PW-2) on 28.01.1987 with the allegations that he found the door hasp broken and various silver articles missing from his shop. During the course of investigation, the stolen silver articles were recovered from the possession of the present petitioners. After framing of the charge, the prosecution examined 5 witnesses and produced the relevant documentary evidence. The petitioners, in the plea recorded u/s 313 Cr.P.C., denied the circumstances appearing against them in the prosecution evidence; but did not adduce any evidence.

3. The admitted position before the learned Trial Court had been that the case was directed against the petitioners essentially on the basis of recovery of the articles; and though the attesting witnesses of such recovery did not support the prosecution case as such but the learned Magistrate was of opinion that the

witnesses had in fact affirmed the facts relating to such recovery and then, the recovery was precisely established with the testimony of Hari Ram-PW-5 (the Investigating Officer). The learned Magistrate though found that the charges relating to the offences under Sections 457 and 380 IPC were not substantiated, but for the reason that the petitioners were found in possession of the property belonging to the complainant that had been stolen from the shop, held them guilty of the offence u/s 411 IPC and sentenced each of them to 3 months' simple imprisonment. The learned Appellate Judge noticed the reasoning and the findings of the learned Magistrate, found no case for interference, and, accordingly, dismissed the appeal.

4. It has been argued on behalf of the accused-petitioners in this revision petition that they have been convicted only on the basis of the uncorroborated testimony of the Investigating Officer; and that the recovery having not been proved by the motbirs and the learned Magistrate who conducted the identification parade of the articles having not been examined, the learned subordinate Courts have acted wholly illegally in taking the factum of recovery proved against the petitioners. It is further submitted that the accused-petitioners have already suffered in this case for last about 23 years and have remained in custody for about 2 weeks; and no useful purpose would be served by sending them to imprisonment at this length of time. The learned Public Prosecutor has, on the other hand, duly supported the orders impugned.

5. Having heard the learned Counsel and having examined the record, so far the conviction of the petitioners is concerned, this Court finds no ground for interference particularly when the learned Magistrate has returned the findings against the petitioners after proper appreciation of the evidence available on record and the findings have been affirmed by the Appellate Court, again after examination of the record.

6. So far the aspect of sentence is concerned, it is noticed that the accusation relates to the incident of the year 1987; and the petitioners have faced this case for about 23 years and have remained in custody for about 13 days. Nothing else has been placed before the Court to justify further imprisonment of the petitioners in relation to this case at this length of time. In the totality of circumstances, this Court is of opinion that interest of justice shall be served if the sentence awarded to the petitioners is reduced to that of the period already undergone.

7. Accordingly, this revision petition is partly allowed; while the conviction of the petitioners for the offence u/s 411 IPC is maintained, the sentence awarded to each of the petitioners is reduced to the period already undergone. The petitioners are on bail and need not surrender. The bail bonds stand cancelled.