

(2010) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 106 of 2001

Ramswaroop

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Prevention of Damage to Public Property Act, 1984 — Section 3

Citation : (2011) 2 RLW 1398

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; Piyush Kumar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Sharma, J.—By filing instant criminal revision petition u/s 397 read with section 401 Cr.P.C., the accused petitioner has challenged the impugned Judgment of conviction and sentence dated 11.8.2000 passed by learned Addl. Sessions Judge No. 1, Bundi (Raj.) (for short "the learned appellate court") in criminal appeal No. 15/1997 by which he affirmed the Judgment of conviction and sentence dated 18.12.1996 passed by learned Addl. Civil Judge (Junior Division) & Judicial Magistrate S. No. 3 Bundi (for short "the learned trial Court") passed in criminal case No. 1020/95. In this appeal learned counsel appearing on behalf of accused petitioner without going into merits of the case has made a request to the Court that he is not challenging the conviction part of the judgment of Courts below but he is only requesting to the Court that the sentence of the accused petitioner be reduced for the period already undergone.

2. He has further urged to this Court that in the instant case the alleged incident has taken place on 1.9.1995 i.e. approx. more than 15 years ago from today and the accused petitioner has remained in judicial lock near-about 42 days. Lastly, he submits that the accused petitioner is 42 years of age, having his family and

his children are in marriageable age. It is first offence of the accused petitioner and he is not a habitual offender. The only allegation against the accused petitioner is that he broken the school window by the axe. The value of the window which was broken by the accused petitioner at the relevant point of time was Rs. 500/-. There is no minimum punishment in section 3 of Prevention of Damages of Public Property Act, 1984.

3. The learned Public Prosecutor has controverted the arguments advanced by the learned counsel for the accused petitioner. He has drawn attention of the Court to Section 3 of the Act of 1984, which runs as under:

3. Mischief causing damage to public property-(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2) shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications or any shall be punished with rigorous punishment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

4. Heard learned counsel for the petitioner and learned PP for the State and perused the entire material made available to me.

5. Looking to the facts and circumstances of the case as also in the interest of justice, I am inclined to take a lenient view in the matter and I think it is not a fit case where the accused petitioner be sent back to Jail because in the instant case the alleged incident has taken place on 1.9.1985 i.e. almost more than 25 years ago and since then the petitioner is facing trial which tantamount to mental agony harassment; it is the first offence of the accused petitioner and he is not a habitual offender; the accused petitioner is having marriageable children and the window broken by the petitioner at the relevant point of time was having worth of only Rs. 500/-. A bare perusal of section 3 of the Act of 1984 clearly reveal that the provisions of aforesaid section does not cover the case of the petitioner. In the result, this criminal revision petition is partly allowed with the following directions:

(1) the order of conviction dated 18.12.1996 passed by learned Addl. Sessions Judge No. 1, Bundi (Raj.) in criminal appeal No. 15/1997 by which he affirmed the Judgment of conviction and sentence dated 18.12.1996 passed by learned Addl. Civil Judge (Junior Division) & Judicial Magistrate S. No. 3 Bundi passed in criminal case No. 1020/95 is maintained.

(2) But looking to the facts and circumstances of the case and the fact that the accused petitioner has remained in judicial lock up near about 42 days, the ends of justice would be met in sentencing him for the period already undergone by him in confinement.

(3) The judgment and order dated 18.12.1996 passed by learned Addl. Sessions Judge No. 1, Bundi (Raj.) in criminal appeal No. 15/1997 by which he affirmed the Judgment of conviction and sentence dated 18.12.1996 passed by learned Addl. Civil Judge (Junior Division) & Judicial Magistrate S. No. 3 Bundi passed in criminal case No. 1020/95 is modified to the extent as indicated above.

(4) The accused petitioner is directed to deposit Rs. 5,000/- (Rs. Five Thousand only) as a fine in the trial Court within a period of three months from the date of receipt a certified copy of this order.

(5) The learned trial Court shall disburse the aforesaid amount of fine in the name of Primary School, Taleda (Bundi).

(6) If the petitioner fails to deposit the aforesaid amount of fine before the learned trial Court then the impugned judgment of conviction and sentence dated 11.8.2000 passed by learned Addl. Sessions Judge No. 1, Bundi (Raj.) in criminal appeal No. 15/1997 by which he affirmed the Judgment of conviction and sentence dated 18.12.1996 passed by learned Addl. Civil Judge (Junior Division) & Judicial Magistrate S. No. 3 Bundi passed in criminal case No. 1020/95 is maintained.