

PETITIONER:
RAM KALYAN

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 06/09/2000

BENCH:
S. Rajendra Babu J. & Shivaraj V. Patil, J.

JUDGMENT:

Shivaraj V. Patil J.

Leave granted.

L.....I.....T.....T.....T.....T.....T.....T...J
This is an appeal challenging the legality and correctness of the order dated 26.3.1998 passed by the learned single Judge of the Rajasthan High Court : Jodhpur in S.B. Criminal Appeal No. 69/1982.

The appellant was prosecuted for the offences under Sections 302, 201 and 379 of the Indian Penal Code alleging that the appellant had stolen the ornaments and other articles, murdered one Nandu by strangulation and destroyed the evidence of murder by throwing the dead body into the well. He denied the charges. The prosecution in support of its case examined as many as 19 witnesses. The appellant was examined under the provisions of Section 313 Cr.P.C. He did not choose to produce any defence witness. The learned Sessions Judge, Bhilwara (Rajasthan) having elaborately considered the evidence, did not find the appellant guilty beyond any doubt under Sections 302, and 201 IPC. However the appellant was found guilty under Section 411 of IPC. Hence the appellant was convicted for the said offence. After hearing, he was sentenced to undergo rigorous imprisonment for two years and to pay the fine of Rs. 500/-. Aggrieved by the said order of conviction and sentence, the appellant filed S.B. Criminal Appeal No. 69/1982 in the High Court of Rajasthan. The learned Single Judge of the High Court dismissed the appeal by the impugned order.

As is evident from the order of the learned Single Judge, initially the learned counsel for the appellant requested only to reduce the sentence by confining it to the sentence already undergone by the appellant having regard to the fact that the date of alleged offence was 24.4.1981. In the order, the learned Single Judge has recorded that the learned counsel for the appellant after arguing the matter requested to issue notice to the appellant-accused to engage other advocate as the file had come to him from the office of late Shri M.M. Singhvi. The request of the learned counsel was refused. The learned Single Judge has further stated in the order that the court would have definitely reduced the sentence but for the facts and circumstances stated, it would not be possible to take a lenient view so

as to reduce the sentence.

Before us also, the thrust of the argument of the learned counsel for the appellant was to reduce the sentence to the period already undergone stating that after committing of the alleged offence more than 19 years have passed; the appellant has already undergone imprisonment for a period of about 9 months. Relying on the case of Trimbak vs. The State of Madhya Pradesh, the learned counsel for the appellant urged that the prosecution did not prove the case against the appellant for the offence under Section 411 IPC in as much as all the ingredients constituting the offence were not established.

We have gone through the judgments of the learned Sessions Judge as well as of the learned Single Judge of the High Court. The trial court has looked into the evidence of the witnesses and on proper appreciation of the same, acquitted the appellant for the offences under Section 301 and 201 IPC and convicted and sentenced for the offence under Section 411 IPC. The learned Single Judge found that there was sufficient evidence on record to sustain the conviction and sentence passed against the appellant. It was also observed that Investigating Officer has clearly stated in his evidence that at the instance of the appellant only, articles were recovered just outside the house of the appellant. It was not shown to us as to why the order of conviction passed by the learned Sessions Judge as confirmed by the High Court should be disturbed when the courts on proper appreciation of evidence have concluded that the appellant was guilty of the offence under Section 411 IPC. The learned counsel repeating his submission in regard to the reduction of sentence stated that the articles said to have been stolen and possessed by the appellant were of small value; the alleged offence had taken place almost 19 years back; the appellant was only 27-28 years of age on the date of alleged offence; he has already undergone the imprisonment for a period of 9 months and hence the court may take a lenient view to reduce the sentence to the period of imprisonment already undergone. The learned Single Judge of the High Court in the order has observed that "In ordinary circumstances, this court would have definitely reduced the sentence, but for the facts and circumstances stated above, it would not be possible for this court to take a lenient view of the matter and reduce the sentence". But the learned Single Judge has not indicated the facts and circumstances why lenient view could not be taken. The learned Single Judge himself in the beginning of the order has stated that the court would have accepted the submission made by the learned counsel for the appellant and reduced the sentence to the sentence already undergone. It appears that the learned counsel who argued before the High Court was not engaged by the appellant but the brief had come to him from the office of late Shri M.M. Singhvi, Advocate; he requested for issuance of notice to the appellant but the same was refused as such a request was made after arguing the case. The alleged offence had taken place almost 19 years back when the appellant was of the age of 27-28 years, obviously he is 45-46 years of age now. He has already suffered imprisonment for a period of about 9 months as stated by the learned counsel for the appellant on the basis of the certificate said to have been issued by the jail authorities. The appellant was granted exemption from surrendering by the order of this court dated 27.3.2000.

Keeping in view all the facts and circumstances of the case, the order of conviction passed against the appellant cannot be disturbed and the sentence of rigorous imprisonment should be reduced to the period of imprisonment already undergone while confirming the order of conviction. The appellant shall be released forthwith, if he is not required in any other case. The bail bond, if any given, relating to this case shall stand discharged. The appeal is ordered in the above terms.

JUDIS