

S.B. Criminal Revision Petition No.464/2006.

Raju Vs. State of Rajasthan

Date of order :: 12.06.2006.

HON'BLE MR.JUSTICE DINESH MAHESHWARI, VJ.

Mr. Shambhoo Singh, for the petitioner.

Mr. S.N. Tiwari, Public Prosecutor.

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Heard learned counsel for the petitioner and perused the material placed on record.

While being detained in District Jail, Sirohi in relation to C.R. No.13/2004, Police Station Revdar for offences under Sections 363, 366 and 376 IPC by the order of the learned Additional Sessions Judge (Fast Track) No.1, Sirohi, the petitioner-Raju, along with another prisoner Devaram, escaped from the custody by jumping the wall of the prison at about 12:45 p.m. on 04.07.2004. However, the petitioner and the said Devaram were arrested at 1:20 p.m. on the same day at Shamshan Ghat Road, Sirohi. The petitioner was accordingly charged and tried for offence under Section 224 IPC along with the said co-accused Devaram. The learned Chief Judicial Magistrate, Sirohi proceeded to consider the entire material available on record including oral and documentary evidence and found that the prosecution has been able to substantiate the charge against the accused beyond all doubts. The accused

were accordingly convicted under Section 224 IPC and the prayer for extending the benefit of probation was refused in the circumstances particularly that they had escaped from Jail despite having been lawfully detained. The petitioner and the said Devaram were sentenced to imprisonment for one year by the judgment and order dated 28.07.2005.

It appears that the other accused Devaram did not appeal against the judgment and order dated 28.07.2005. However, the appeal taken by the petitioner Raju, being Criminal Appeal No.35/2005 has been heard and decided by the learned Sessions Judge, Sirohi by the impugned order dated 05.06.2006. Submissions were made before the learned Sessions Judge about the so-called contradictions in the statements of the witnesses; and discrepancy about the place of arrest after the alleged escape. The learned Sessions Judge has again examined the entire evidence available on record and found the contentions regarding contradiction and discrepancy to be bereft of substance.

Another contention was raised before the learned Sessions Judge that the age of the petitioner-appellant was about 18 years at the time of incident and on the basis of a decision of this Court in Dhanna Ram Vs. State of Rajasthan : 1989 WLN (UC) 480, it was suggested that in such circumstances, the accused may be ordered to be released by reducing the sentence

of imprisonment to the period already undergone. The learned Sessions Judge distinguished the said case of Dhanna Ram with the observations that therein the sentence was reduced to the period already undergone in view of the fact that the matter was 11 years old but in the present case the incident was of the year 2004. However, the learned Sessions Judge was of opinion that looking to the nature of offence and the age of the accused, punishment of one year imprisonment was excessive and hence ordered that the sentence be reduced to three months' imprisonment. Aggrieved the accused-petitioner has submitted this revision petition.

Learned counsel for the petitioner has attempted to raise the same contentions on the merits of the case about the so-called contradictions in the statements of witnesses and discrepancy about the place of arrest of the petitioner.

Having perused the detailed and thoroughly considered judgments of the two courts dealing with the evidence, oral and documentary, on record this Court is satisfied that the learned courts below have not committed any illegality or irregularity in appreciation of the evidence and the findings have been reached against the petitioner in accordance with law and call for no interference in revision.

The learned trial Judge has dealt with and analysed the entire evidence on record and has rightly pointed out that

minor variations in the statements of the witnesses were merely superficial and rather natural. The learned Sessions Judge has again dealt with the entire evidence and has found that in the arrest memo Ex.P/5, the petitioner was shown to have been arrested at 1:20 p.m. on 04.07.2004 at Shamshan Ghat Road and this fact has also been established by the witnesses PW-3 Ramnath, PW-4 Shivnath and PW-14 Sajjan Singh. It has also been found established that the accused eloped by jumping the wall after tying two dhoties and towel on the pipe that were recovered from the site. Having considered the analytical discussion of the two courts below, this Court is clearly of opinion that no case for interference in the findings on merits is made out.

Learned counsel for the petitioner then submitted that the petitioner was 18 years of age at the time of incident and the mistake seems to have been committed for immaturity and having regard to the circumstances of the case, he ought to have been extended benefit of probation. The submissions do not sound convincing. The petitioner was already in detention for being accused of offences under Sections 363, 366 and 376 IPC and then has escaped from the custody by making or at least joining in the preparations for breaking the jail. In the overall circumstances of the case, the learned trial court has rightly refused extending benefit of probation in this case.

Learned counsel for the petitioner lastly submitted that the sentence awarded to the petitioner remains excessive; and moreover, he has remained in custody from 04.07.2004 to 25.08.2004, i.e. a period of one month and 22 days and is further in custody since 05.06.2006 and, therefore, interest of justice would meet if the sentence is reduced to the period already undergone as the petitioner has been sentenced to three months imprisonment and has served more than two months. Learned counsel has referred to the same decision in the case of Dhanna Ram (supra) in support of his submissions that the sentence may be reduced to the period already undergone. These submissions are also not apposite to the facts of the case and cannot be accepted. The learned trial Judge has taken all the facts and circumstances into account and then sentenced the petitioner for imprisonment for one year. The sentence awarded by the learned trial Judge cannot be said to be not commensurate with the offence committed and, in fact in the present case the learned Sessions Judge in appeal seems to have proceeded with sympathy in reducing the sentence from one year to three months with reference to the nature of offence and the age of the accused. The sentence awarded by the learned Sessions Judge remains rather on the lower side and in any case does not suffer from any illegality or impropriety so as to be reduced further. In Dhanna Ram's case the incident was of the year 1976 and the

revision petition was being decided by this Court in the year 1987 and reduction of sentence to the period already undergone in the said case does not make out a ratio that in every case for offence under Section 224 IPC the sentence is required to be reduced to the period already undergone.

Having regard to the overall facts and circumstances of the case, this Court is clearly of opinion that this revision petition remains absolutely bereft of substance and is not fit to be admitted.

The revision petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), VJ.