

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:110174

(SI No.21)

Court No. - 78

Case :- CRIMINAL APPEAL No. - 2840 of 1982

Appellant :- Ram Prasad And Another

Respondent :- State

Counsel for Appellant :- Sanjay Singh

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Sanjay Singh, learned counsel for the appellants, Sri Rajesh Kumar Gupta, learned A.G.A. for the State and perused the record.

2. The instant appeal was filed by the appellants Ram Prasad and Tej Singh, being aggrieved by the judgment and order dated 13.10.1982 passed by the 12th Additional Sessions Judge, Agra in Sessions Trial No. 100/1980, whereby both the appellants have been convicted for the offence under section 379 IPC and sentence to undergo two years rigorous imprisonment.

3. Vide order dated 12.11.982, the appeal was admitted and the appellants were granted bail. During the pendency of the instant appeal, the appellant no. 2 Tej Singh has died and the appeal against the appellant no. 2 Tej Singh stands abated. The third appellant Lohray has also filed a separate criminal appeal in which on the death of the appellant Lohray, the said appeal is also stated to have been abated against the co-accused Lohray as informed by the learned counsel for the appellant. Thus the instant appeal is being heard only on behalf of accused Ram Prasad.

4. The brief facts of the case are that on 20.10.1977 at about 4:45, the informant Bhudev Sharma alongwith his daughter Smt. Shanti Devi was going to Agra from Dholpur in Roadways Bus

alongwith a box in which luggage of his daughter Smt. Shanti Devi was kept and the box was kept at front side near the driver's seat. Between Dholpur to Agra, Bus stopped at place Tehra and some people got down from the bus. thereafter, bus proceeded from Tehra and at some distance, the informant noticed that box of his daughter is not in the place. He shouted and immediate contacted the driver and conductor of the bus. The driver immediately turned the bus, came back towards the place Tehra. In between they found that the Police, Sub Inspector, P.B. Sharma and one Constable were patrolling on motor cycle. They informed about the theft of the box. Then the Police S.I. came towards Tehra, they saw three persons were carrying box, out of which one person carrying the box on his head and two other were having guns in their hands. Driver stopped the bus on the side of the road. Police alongwith 5-10 passengers followed them and caught three accused persons. While the Police were following the accused persons, two fires were made on the police by the two persons who were armed with guns but no one has sustained any injury. Three accused persons were caught hold by the police and box was recovered. Box was opened with the help of the key provided by Shanti Devi, the daughter of the informant and list of articles were prepared and after recovery of the box, guns alongwith cartridges, the police brought them to the Police Station, wherein the FIR was lodged against the accused persons.

5. After taking necessary permission, the case under section 25/27 of Arms Act was registered against the appellant Ram Prasad, Tej Singh and co-accused Lohray. After investigation, the charge sheet was filed, the case was committed to the Sessions Court and the trial was proceeded.

6. During trial, six witnesses were examined. P.W.1 Bhudev Sharma, the informant has narrated the above story. The independent witness Vishambhar was examined as P.W.-2 who was also supported the story of the prosecution, as narrated above. P.W.-3 Smt. Shanti Devi, the daughter of the informant, was also supported the story of the prosecution, as narrated above. P.W.4 Karan Singh, the conductor of the bus has also supported the prosecution story. P.W. 6 S.I. P.B. Sharma has arrested the accused persons and recovered the articles of theft. P.W.-5 R.D. Gairola, the Investigating Officer, has investigated the instant case and has completed the investigation and filed the charge sheet against the appellants. After framing of the charges, the accused denied the charges and claimed trial.

7. Accused Lohray and Ram Prasad have licenses of their guns. As per the statement of the accused, some ladies had taken down the box at Tehra and in which the police and other persons came there where accused persons apprehended. On the basis of the fact that accused Ram Prasad and Lohray were having license for the guns carried by them, the proceeding under section 25/27 of the Arms Act, were dropped against them.

8. By impugned order, the trial Court has found that the independent witness P.W.4 Karan Singh, the conductor of the bus, did not support the allegation of fires made by the appellant Ram Prasad and the co-accused Lohray and P.W.6 P.B. Sharma has stated that two fires were made, however none has sustained any injury, nor statement was made by the P.W.6 about the intention of the accused persons to kill any one or causing any injury to any one and there was no evidence on record to prove that actually fire was made to any one On the basis of the same, the accused persons were acquitted for the offence under section 307 IPC. Since the appellants were found carrying box which was stolen by them accordingly, in view of the above, they have been convicted under section 379 IPC.

9. There is no evidence by either side to prove that there was any enmity between the accused persons and the informant and no mala fide were alleged against the appellants with regard to false implication of the accused persons. The entire case is well supported by the witnesses, not only by the informant and the police who had recovered the stolen property from the possession of the accused persons but also by the independent witness, the conductor of the bus.

10. In view thereof, this Court finds no illegality in the conviction of the accused persons for the offence under section 379 IPC. Therefore, conviction of the all the accused persons for the offence under section 379 IPC is upheld.

11. At this stage, learned counsel for the appellants submits that two other co-accused have already died, the appeals filed by them have also been abated. The appellant Ram Prasad was sentenced with three years R.I., out of which one month sentence is already undergone by the appellant after conviction and sentence of the trial Court. The bail was granted by this Court and he has never misused the liberty of bail granted to him.

12. It is further submitted that the instant appeal is pending since

1982, more than 43 years have passed since then. The appellant is not a habitual offender and after this incident, no other incident is reported against the appellant Ram Prasad and he had also faced trial for about five years. In view of the aforesaid circumstances, he submits that looking to the old age of the appellant Ram Prasad, the sentence of the appellant Ram Prasad be modified to the sentence already undergone by him with appropriate fine to be imposed against him.

13. Looking to the over all circumstances as narrated above, learned A.G.A. do not oppose the prayer for modification of the sentence of the appellant Ram Prasad. He submits that appropriate order may be passed with regard to the sentence.

14. Having regard to the overall circumstances of the instant case and looking at the fact that the appellant has faced trial for five years and one month sentence has already undergone by the appellant after conviction and sentence of the trial Court, the instant appeal is pending since 43 years and at the time of the recording of the statement under section 313 Cr.P.C. in the year 1982, the appellant was aged about 30 years old and at present he is 77 years of age, in view thereof, this Court finds it appropriate to modify the sentence.

15. Accordingly, although the appellant Ram Prasad is held guilty of the offence, charged for but so far as the sentence is concerned, the same is modified to the extent that he is sentenced for the period undergone by him with fine of Rs.20,000/- to be deposited by him within four weeks from today, failing which the appellant shall undergo further sentence of three months simple imprisonment.

16. The appellant Ram Prasad is on bail, he need not surrender. His bail bonds are cancelled and sureties are discharged.

17. With the aforesaid observations, the instant appeal is **partly allowed**.

18. The copy of this judgment alongwith the record of the lower court be forwarded to the trial Court for compliance forthwith for further necessary action.

Order Date :- 10.7.2025
Monika

(Anish Kumar Gupta, J.)