
(1982) 05 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1017 of 1982

Ramesh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 29, 1982

Hon'ble Judges: M.M.Punchhi, J

Advocate: M.L. Sarin, Madhu Tewatia, Advocates for appearing Parties

Judgement

M.M. Punchhi, J.

1. On the night intervening 3rd/4th June, 1978 Man Mohan Singh was sleeping in his bungalow situated at Faridabad along with his children in front of the compound of his house. Around 11.00 P.M. he heard a thud showing some person to have trespassed into his house after scaling over the rear boundary wall of the house. He went into that direction and found three accused having trespassed into his house. He was in a position to identify them because they were vagabonds and used to wander in that sector aimlessly. He raised an alarm 'thief' and gave a chase to the trespasser. With the aid of one Vinod Kumar, P.W. a neighbouring shopkeeper, they were able to nab one of the accused named Rajpal Singh but the remaining two being Ramesh, the present petitioner and Sahib Singh escaped. From Rajpal Singh who was caught at the spot, two pants, one bushirt and one Sari were recovered which belonged to Man Mohan Singh.

2. For these acts, the three accused were sent up for trial under sections 457/380, Indian Penal Code. Shri B.P. Jindal, the Chief Judicial Magistrate, Faridabad sentenced each of accused under section 380 ad also under section 457, Indian Penal Code. On the question of sentence it was the petitioner alone who was sentenced to three months rigorous imprisonment under both the counts and the sentences were ordered to run concurrently. so far as the other two accused were concerned they were let off on probation since they were less than 21 years of age on the date of the commission of the offence. The respondent, Ramesh, was denied the concession since his age at that time was stated to be 27 years. The learned

Additional Sessions Judge, Faridabad to whom he appealed left the order of conviction and sentence uninterfered which has given rise to the petitioner to approach this Court in revision.

3. Mr. Sarin, the learned counsel for the petitioner contended that it is noteworthy that all the accused had individually been charged for the offence under section 457 as also for the offence under section 380, Indian Penal Code. He pointed out that no stolen article was recovered from the petitioner and in the absence thereof the charge under section 380 IPC can not be said to have been proved against him. It is true that the accused were not charged constructively with the aid of section 34 IPC. And now to say at this juncture that all the three accused had a common intention to commit theft, and the commission of theft by one of them will have the effect of visiting the consequences on the others, to my mind, would cause serious prejudice to the defence of the petitioner. He was accused of having committed an offence under section 380 IPC and in the absence of any stolen property recovered from him immediately after the theft, no presumption could be raised that he was the thief muchless that he had committed the theft from the dwelling house. Thus in these circumstances the conviction of the petitioner under section 380 IPC is wholly uncalled for and is set aside acquitting him of the charge.

4. So far as the conviction under section 457 IPC is concerned, the learned counsel for the petitioner has contended that the presence of the petitioner in the house in question cannot be said to commit any offence, and the conviction under the said section too is not sustainable. In my view, the argument is logical, for the presence of the petitioner in the house may well be for a purpose other than that of committing of any other offence punishable with imprisonment as described in section 457 I.P.C. However, the presence of the petitioner in the house during the night certainly is an act punishable under section 453 IPC, for he committed simple lurking house trespass by scaling over the wall by using cover of darkness for the purpose. It has to be taken note of that in order to conceal his houserepassing from the inmates, who had a right to exclude or evict him, from the building which was the subject matter of trespass, he cannot put forth remotely even the suggestion that he had scaled over the wall for the joy of it. Accordingly his conviction under section 457 IPC is set aside but instead he is convicted under section 453 IPC, which warrants sentence of two years rigorous imprisonment and also that of fine.

5. Mr. Sarin then contended that the impediment in the way of the trial Court in releasing the petitioner on probation stands removed by alteration of his conviction under section 453 IPC. Being a first offender he might as well be put on the road of reformation as were his companions. This to my mind is a useful suggestion. In lieu of the sentence, let the petitioner execute a bond in terms of section 360 Cr.P.C. in the sum of Rs. 2000/- with one surety of the like amount for a period of one year by binding himself to come and receive the sentence when called upon by the court to do so and in the meanwhile to keep peace and be of good behaviour.

6. This petition is partially allowed in the aforesaid terms.