
(2002) 08 SC CK 0098

Supreme Court of India

Case No: Criminal Appeal No.184 of 2002

Ali Mehndi

APPELLANT

Vs

State, Government of
NCT Delhi

RESPONDENT

Date of Decision: Aug. 27, 2002

Acts Referred:

- Arms Act, 1959 - Section 25
- Evidence Act, 1872 - Section 3, 9
- Penal Code, 1860 (IPC) - Section 398

Citation: (2003) 1 ACR 828 : (2002) 8 JT 108

Hon'ble Judges: B. N. Kirpal, C.J; K. G. Balakrishnan, J; Arijit Pasayat, J

Bench: Full Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The appellant was tried for offences punishable under Sections 393/357 of the Indian Penal Code, 1860 (in short "IPC"), Section 25 of the Arms Act, 1959 and section 5 of the Terrorists and Disruptive Activities (Prevention) Act, (in short TADA Act").

2. The case of the prosecution was that on 7th November, 1991 one Smt. Bismillah Begum. PW.2, was living at her house no. 444, Janta Flat, Nand Nagri, Delhi. She had gone out to the neighbourhood for a few minutes and had left her house unlocked. When she returned she found that two boys had entered the house and two boxes containing household articles were opened and the said boys were standing inside the room. On seeing her returning, one of the boys ran away but the other boy, namely, Ali Mehndi, the appellant herein, took out a pistol and pounced upon her and tried to gag her mouth and told her to hand over whatever cash and jewellery she had.

3. Bismillah Begum, however, bit Ali Mehndi on fingers and freed herself from his clutches. At that time, her daughter aged about 18 years also started shouting. On hearing the noise, Ali Mehndi ran away from the house. While he was running away, it is alleged that he was caught and later on tried for the aforesaid offences.

4. There is hardly any need to go into on facts in great detail except to notice that the country made pistol which was recovered from the possession of the appellant was stated not to be in working condition. Nevertheless the appellant was awarded and convicted one year's rigorous imprisonment and a fine of Rs. 500/- u/s 25 of the Arms Act. He was also awarded seven years' rigorous imprisonment having committed the offence u/s 398 IPC and a fine of Rs. 1000/- was also imposed. Both the sentences were to run concurrently.

5. It is not in dispute that the appellant has already served the sentence of more than one year. Therefore, the appeal, in so far as the conviction u/s 25 of the Arms Act is concerned, has become infructuous. Even otherwise, we find that on the basis of evidence on record he was rightly convicted.

6. As far as the conviction u/s 398 IPC is concerned, we find that PW.2, Bismillah Begum, the alleged victim, herself has not supported the case of the prosecution. She stated in court that the appellant was not the person who had entered her house and had shown the pistol to her in an attempt to commit robbery. She stated that the robber had been caught and was shown to her; but the person who was apprehended on the day of the alleged robbery was not the accused. The trial court has brushed aside this testimony by observing that her statement is not believable and that "she seems to be deposing falsely having been won over by the accused or being fearful of the accused."

7. With respect, this may be a surmise of the court which seems to be unjustified. In view of the categorical statement of PW2, Bismillah Begum, who surely would have had no reason to shield the appellant if he was the real culprit. It was Bismillah Begum who was attacked and it is she who lodged the FIR.

8. In view of the aforesaid testimony of Bismillah Begum which we see no reason to discard, the appellant could not have been convicted u/s 398 IPC. For the aforesaid reasons, his conviction u/s 398 IPC is set aside and consequentially the sentence. The appellant will be released forthwith unless required to be in custody in any other case.

9. The appeal is disposed of accordingly.