

Surendra Kumar

Vs

State of Rajasthan

Criminal Appeal No. 236 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

07.02.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave the appellant has been convicted under Section 411 IPC and sentenced to six months' rigorous imprisonment and a fine of Rs. 500, in default two months' rigorous imprisonment. We have gone through the judgment of the Sessions Judge and also of the trial Magistrate and we agree with the High Court that there was no prima facie case for admitting the appeal before the High Court. The appeal is clearly concluded by findings of fact. Mr. Soni tried best to argue that there was no evidence to prove the identity of the articles stolen not was there any relevant evidence to show that the recovery statement made by the accused under Section 27 could be relied upon. These are essentially questions of fact and two courts of fact have clearly and the High Court impliedly upheld this finding of fact and have found that the prosecution has proved the identity of the property and that the confession made under Section 27 was true and voluntary.

2. It was then submitted that the appellant was below the age of 21 years at the time when the offence is alleged to have been committed, therefore, he should be given the benefit of Section 360, Criminal Procedure Code which is mandatory where an offence is punishable with fine or with imprisonment for a term of seven years or less. The case of the appellant undoubtedly falls within the four corners of Section 360. In these circumstances, therefore, the sentence of imprisonment is directed to be suspended and the appellant is released on probation and will execute a personal bond of Rs. 2000 to maintain good behaviour for a period of two years. In case the appellant violates the conditions of the bond he will be called upon to receive the sentence. With this modification, the appeal is dismissed.

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