

Ashok Kumar

Vs

State (Delhi Administration)

Criminal Appeals Nos. 66-67 of 1980

(V. R. Krishna Iyer, R. S. Patha JJ)

29.01.1980

JUDGMENT

KRISHNA IYER, J. -

1. The common appellant in both these appeals is a teen-aged student turned criminal adventurer in the elitist area of car-lifting and scooter-poaching current in our fashionable cities, including Delhi. While he was a college student and but 19 years old, the appellant tried his hand at steeling a scooter way back in 1971. He was arrested but bailed out and while on bail was accused of committing a car theft. Both these cases were tried and he was found guilty. The scooter offence resulted in a sentence of two years' imprisonment and a fine of Rs. 2000. The car theft got converted into an offence under Section 411, IPC and, consequently, a reduced sentence of imprisonment for six months and a fine of Rs. 500.

2. The convictions being concurrent and no substantial infirmity being present, we have confined leave to appeal to the question of sentence only. But sentencing - the cutting edge of the judicial process - is the crucial strategy of the criminal law in achieving social defence and delinquent rehabilitation. So we have to consider the totality of factors bearing on the offence and the offender and fix a punishment which will promote effectively the punitive objective of the law - deterrence and habilitation.

3. We do not deem it necessary to set out elaborately all the socio-legal facts which have been discussed at the bar. All that we need say is that the offence took place in 1971 and we are now in 1980. A long protracted litigation is some deterrent for a young man in his twenties. The accused was nineteen when the offences were committed and his youthful age is a factor which deserves consideration. A long period of incarceration in the present condition of prisons may brutalise the boy and blunt his finer sensibilities so that the end-product may perhaps be more criminal than the one at the point of entry. Not that all prison terms are not deterrent but some cases prove to be counter-productive especially when the delinquent is young.

4. It may be interesting to recall Lord Soper's observations in the House of Lords in a debate on British Prisons, where he said :

Now as to reform. I was a prison chaplain for 30 years. I cannot remember a single man who was reformed by being in prison - not one. I can remember who those, serving very short sentences, were for a time, perhaps, brought to recognise something of the gravity of what they had been doing; but I am completely convinced that the longer a man stays in prison, the longer he stays in that kind of

incarceration, the less is the prospect of reform and the more certain is the process of decay. That is why I have consistently tried to say that any man who is imprisoned in one particular set of circumstances for more than five years is probably dead for life. It is highly unlikely that those who have endured that kind of monotonous deadening will be able to recover in the real world what they have lost in the artificial element and environment of prison life. There has been, I think, in my time, a considerable increase in the amelioration of conditions in prison, but, to refer again for a moment to the artificiality of it, the longer a man stays in prison the less capable he will be of recovering his place and establishing his position back in the real world to which he is increasingly made alien by the very processes which he undergoes.

5. Moreover, the appellant has already suffered nearly six months' imprisonment and it is a well-known fact for criminologists that the initial few months of jail are the most painful and, therefore, the most deterrent. In the present case the offender having served a term of nearly six months must well have realised that the game of crime does not pay.

6. The fines of Rs. 2000 and 500 imposed on the appellant should remain without interference. Payment of fine brings home the sense of responsibility in a surer fashion than even short terms of imprisonment in some cases. We, therefore, decline to reduce the fine and reject counsel's plea in this behalf.

7. More important than these circumstances is the social urgency of making this student offender a non-offender. There are two circumstances which weigh in our mind. The young man has married and has three children. This a measure of assurance that he will not play recklessly with his freedom. Family life is ordinarily an insurance against a career of crime. We have also insisted on the uncle of the appellant undertaking to assure the good behaviour of the nephew who is the delinquent in question. The uncle Shri Kohli has filed an affidavit dated December 10, 1979 in this Court making the necessary undertaking to guarantee the good behaviour of his nephew. Thoughtless parents and guardians leaving a free hand for their wards account for flippant criminality of the type we come across in middle class society. The undertaking given by the uncle has, therefore, considerable relevance. We make a breach of the conditions in the affidavit actionable on the motion of the State.

8. It is a tragic reflection that affluent criminality should become so pervasive among the student community. It is uncomplimentary to the character-building component of the system of education in the prestigious institutions of our cities. We hope the State will take better care to instil a sense of values in the college campuses than it does now. We allow the appeals to the extent of reducing the sentence of the appellant to the period undergone, but maintain the sentence of fine and the alternative period of imprisonment in case of default.

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