

Ram Shankar

Vs

State of Madhya Pradesh

Criminal Appeal No. 182 of 1974

(O Chinnappa Reddy, R. S. Sarkaria JJ)

23.09.1980

JUDGMENT

1. The appellant Ram Shankar was tried and convicted by the Sessions Judge, Damoh under Sections 392/397, IPC and sentenced under the latter count to seven years' rigorous imprisonment which is the minimum punishment prescribed for this offence. His appeal was dismissed by the High Court. He has now seam before us in appeal by special leave under Article 136 of the Constitution.
2. The prosecution case against the appellant, as it emerges from the record was that on Dussera Day, October 17, 1972, ten persons including PW 1 and PW 3 of village Mamarkhan and PW 2 a resident of village Aslana, came to Damoh to see the procession of Goddess Kali. After seeing the procession at about 2 a.m. in the night these persons came to the booking office at the Railway Station, Damoh as they had to buy tickets for taking the train to Aslana. there was a big crow at the booking-office. All these eleven persons gave 35 paise each to Ram Singh (PW 1) and asked him to purchase tickets for all of them. Ram Singh then stood in the queue before the ticket window. He was carrying Rs. 3.85 in the palm of his left hand. While Ram Singh was counting the money the appellant suddenly appeared. He was carrying a naked sword. The appellant touched the palm of Ram Singh with the tip of his sword. The appellant touched the palm of the Ram Singh with the tip of his sword, and lifted the money. The appellant them carried away the money and entered the booking-office. PW 1 informed about the incident to constable Shaikh Karim (PW 4) who was on duty at the railway station. PW 1 also informed the Station-Master. On receiving a telephonic call from the Station-Master, the policemen arrived in a lorry and disarmed, arrested and took away Ram Shankar-appellant.
3. The plea of the appellant at the trial was that liquor was administered to him against his will by Ram Gopal and Haricharan of Damoh, as a result of which he was incapable of knowing the nature of the act that he might have committed. In short, the defence was under Section 85, IPC. The appellant did not examine Ram Gopal and Haricharan and otherwise failed to establish his defence.
4. Technically the offence committed by the appellant was one under Section 397, IPC as he had "used a deadly weapon" in committing the robbery and the courts had no option but to impose on him the minimum sentence of seven years' imprisonment. But there were several mitigating circumstances in the case. There was nothing on the record to show that the appellant was a person of bad antecedents. He was a primary school teacher. The amount alleged to have been robbed was a trivial amount of Rs. 3.85. He did not cause physical hurt to anybody. He did not make any attempt to rob the cash in the booking-office where he quietly remained standing for a sufficient time. He did not resist his arrest. According to the Station-Master, Rishi Kumar Khare (PW 5), constable

Shaikh Karim had informed him that the appellant had given his name as Shankar s/o Nand Lal of Damoh. Thus, the appellant made no attempt to conceal his real identity. We, therefore, think that this an appropriate case where the Executive Government may in exercise of its power of clemency under Section 432 of the Code of Criminal Procedure, 1973, remit or reduce the sentence of the appellant. With this observation, we dismiss this appeal. The appellant is granted three weeks' time to surrender to his bail bonds to serve out the sentence inflicted on him.

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