

D. Srinivasan

Vs

Delhi Special Police Establishment

(K. Jayachandra Reddy, G. N. Ray JJ)

Criminal Appeals Nos. 748 of 1980 with 592, 617-18 and 676 of 1980

11.08.1992

JUDGEMENT

1. Criminal Appeals Nos. 592/80, 617-618/80 and 676/80 were taken on Board. All these appeals arise out of the common judgment of the High Court of Madras in Criminal Appeals Nos. 546/75, 588/75, 590/75 and 591-92/75. The appellants are convicted under S. 120-B of the IPC read with Ss. 381, 411 and 414, IPC. and S.5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to various periods of Rigorous Imprisonment. A-1, A-4 and A-7 were also sentenced to pay fine. In Calendar Case No. 1/ 1971 on the file of the Special Judge ten original accused were tried for the above-mentioned offences. The trial Court acquitted A-6 and convicted rest of them. The convicted accused have preferred the appeals before the High Court but the same were dismissed.
2. All the convicted accused preferred special leave petitions and leave was granted pursuant to which these appeals before us are numbered.
3. In Criminal Appeal No. 748/80 A-1 is the appellant. In Criminal Appeal No. 676/ 80 A-2, A-3, A-8, A-9 and A-10 are the appellants. In Criminal Appeals Nos. 617-18/80 A-4 and A-5 are the appellants. In Criminal Appeal No. 592/ 80 A-7 is the appellant.
4. A-1, A-2, A-3, A-8, A-9 and X-10 are public servants being employed in the Southern Railway. A-4 and A-5 are the Railway Contractors of rubbish and the workshop refuge in the Golden Rock Railway Workshop. A-6 and A-7 are the Hardware and Iron Merchants at Tiruchirapally. It is alleged that all of them conspired along with one Kaliaperumal, the approver and committed theft of scrap materials, M.S. Plates belonging to the Southern Railways. A-2, A-3, A-8, A-9 and A-10 who are Rakshaks in the Railway Protection Force were involved. A-6 was the agent of A-4 and the son of A-7. It is alleged that on 30-6-1969 A-1, A-8 and A-9 committed theft of metal scrap worth about Rs. 2,250/- and they removed them in wagon under the cover of Gate Pass. Likewise three more instances have been cited by the prosecution which took place on 1-7-69, 19-7-69 to 29-7-69 and 28-7-69 to 30-7-69 during which properties belonging to the Railway Workshop were removed in wagon under cover of Gate Pass and for corrupt considerations the public servants namely Rakshaks are alleged to have committed the act of misconduct and caused pecuniary advantage to Merchants and Contractors who also figured as accused. Several witnesses were examined. The accused, however, denied the offence.
5. We have perused. the judgment as well as the evidence of the material witnesses including that of

the Approver, P.W. 4. His evidence is amply corroborated by other evidence. The investigating authorities also effected recoveries. The evidence as against these appellants has been accepted by both the Courts below. The learned counsel appearing for the appellants could not show any infirmity in the judgment. The evidence is clinching as against appellants. Therefore, we see absolutely no ground to interfere with the findings and the Courts below have rightly held that the charges as against the appellants are amply proved. Now coming to the sentence we find that A-1 is sentenced to the maximum period of five years Rigorous Imprisonment under S. 5(2) read with S.5(1)(d) of the Prevention of Corruption Act, 1947 and for lesser periods under the other counts. A-4, A-5 and A-7 are sentenced to three years Rigorous Imprisonment under S. 120-B read with Ss. 381, 411 and 414, IPC and S. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act, 1947. Rest of the accused are sentenced to one year Rigorous Imprisonment.

6. The occurrence is said to have taken place in the year 1969. Now nearly twenty three years have elapsed. All the appellants must have become very old and, the learned counsel says that some of them may have died but not able to give the names as such but he is definite that A-1 has died. The appellants have undergone the ordeal of trial for a number of years and convictions have been hanging on their heads for all these years and they have also lost their jobs and they have large family dependent upon them. In such circumstances the Court can award lesser sentence than one year which is the maximum sentence under S. 5(2) of the Prevention of Corruption Act. The Section as it stood in the year 1969 lays down that the Court for any special reason recorded can impose a sentence of imprisonment of less than one year. The circumstances pointed out above do warrant that a lesser sentence should be imposed. From the records we find that the appellants were in Jail for some time and in these circumstances we confirm their convictions and reduce the sentence under each charge to the period already undergone. The sentences of fine in respect of A-1 in Criminal Appeal No. 748/ 80 D. Srinivasan, A-4 in Criminal Appeal No. 617/ 80 Sandanaswamy and A-7 in Criminal Appeal No. 592/80 A.R.M. Perumal Chettiar are confirmed with default clause.

7. These appeals are allowed to the extent indicated hereinabove.

Appeals allowed.

</html