

## **Brij Basi Lal vs State Of Uttar Pradesh on 14 April, 1981**

**Equivalent citations: AIR1981SC1384, 1981CRILJ1032, (1981)3SCC584, AIR 1981 SUPREME COURT 1384, 1981 (3) SCC 584, 1981 CRIAPPR(SC) 269, 1981 SCC(CRI) 761**

**Author: D.A. Desai**

**Bench: Baharul Islam, D.A. Desai**

### **JUDGMENT**

D.A. Desai, J.

1. Special leave to appeal granted limited to the question of sentence only.
2. We heard Mr. A. P. Mohanty, for the appellant and Mr. R. K. Bhatt for the State of U.P. The appellant is convicted for having committed offences under Sections 120B, 420 and 471 of I.P.C. In respect of last mentioned two offences has been convicted on two separate and independent counts.
3. The appellant has been sentenced to suffer rigorous imprisonment for a period of one year for an offence under Section 120B. He has been convicted for committing an offence under Section 420, I.P.C. and has been sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rupees 5000/-, in default to suffer further rigorous imprisonment for one year. For the same charge under a second count, identical punishment has been imposed upon him. He has also been convicted for committing an offence under Section 471, I.P.C. and has been sentenced to rigorous imprisonment for two years and an identical sentence for the second count has also been imposed upon him. The learned Magistrate further directed that the sentence awarded to the appellant for an offence under Section 420, I.P.C. on two different counts shall run consecutively whereas the other sentences shall run concurrently.
4. Unfortunately, the appellant has tried a very bold venture but he has miserably failed also, in that all the sugar bags which he tried to misappropriate for himself had been recovered and taken possession of by the prosecution. It is true that a criminal venture even if it fails, would not provide a mitigating circumstance having a bearing on the quantum of sentence. Even then one has to keep in view the gravity of the offence to assess the proper and adequate sentence. We consider the sentence of rigorous imprisonment for three years and fine of Rs. 5,000/-, in default further rigorous imprisonment for one year for an offence under Section 420, I.P.C. adequate but if the direction to run the sentence awarded on two different counts for two offences under Section 420, I.P.C. to run consecutively, it would mean that the appellant will have to suffer substantive imprisonment for six years apart from the fact that double the fine will have to be paid. Now those

who indulge into criminal adultery for grabbing undeserved advantage are not entitled to any consideration on the quantum of sentence and fine because thereby he is made to part with ill-gotten wealth. We therefore modify the sentence to this limited extent only that substantive sentence awarded for two offences under Section 420 on two different counts shall run concurrently. With this modification, the appeal is dismissed.