

Supreme Court of India

Suryamoorthi And Anr. vs Govindaswamy And Ors. on 5 May, 1989

Equivalent citations: JT 1989 (2) SC 585, 1989 (1) SCALE 1482, (1989) 3 SCC 221 b, 1989 (2) UJ 136 SC

Author: Ahmadi

Bench: A Ahmadi, S Natarajan

ORDER Ahmadi, J.

1. Pursuant to our order dated 13th April, 1989 in the above appeal we have heard the learned Advocates for original accused Nos. 1 to 7 on the question of sentence. So far as original accused No. 4 is concerned, none appeared on his behalf before us. We have taken into consideration the submissions made by the learned Advocates for accused Nos. 1 and 7 and the material placed before us on their behalf. We have also taken into consideration the facts appearing on the record so far as accused No. 4 is concerned.

2. The offence was committed on 20th February, 1972. The accused were arrested on 21st/22nd February, 1972 and were released on bail after a few days. The offence under Section 392 is punishable with rigorous imprisonment for a term which may extend to 10 years and fine. It must be realised that the offence for which the conviction came to be recorded by us on 13th April, 1989 was committed more than 15 years before. In the said 15 years the socio-economic responsibilities of the accused have undergone a considerable change. Accused No. 1 is maintaining a large family consisting of his mother, wife, four daughters, two sons and an unmarried sister. Accused No. 7 has also married and besides his wife he has two minor daughters and an unmarried paternal uncle dependent upon him. He has also another uncle aged about 80 years who is also dependent on him.

3. Out of the amount of Rs. 40,000/- an amount of Rs. 39,170/- has been recovered from accused Nos. 1, 4 and 7. Thus there is a shortfall of Rs. 830/- only. It is true that in the meantime PW 2 has suffered loss of interest on this amount. Taking all these facts into consideration and bearing in mind the fact that the accused persons were in jail for sometime, we think that the ends of justice would be met if the accused persons are fined. So far as the gravity of the offence is concerned, the maximum blame can be laid at the door of accused No. 1, a policeman, next comes Accused No. 7, a neighbour of PWs 1 and 2 and thereafter Accused No. 4 a mere companion. This view can be supported even on the basis of the share of the loot received by each of them. Having regard to various factors such as the passage of time, recovery of almost the entire amount, the time spent in prison before release on bail, etc., we think it is not necessary to send the accused to prison. We, therefore, direct accused No. 1 to pay a fine of Rs. 7,500/-, in default to suffer rigorous imprisonment for three years; accused No. 7 to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for two years; and accused No. 4 to pay a fine of Rs. 3,000/-, in default to suffer rigorous imprisonment for one year. The fine to be paid within three months from today, failing which warrants of arrest to issue. Out of the fine amount, if realised, PW 2 will be paid a sum of Rs. 10,000/- to compensate her for the loss of interest suffered by her. The appeal shall stand allowed accordingly.