
Ramesh Kumar Vs State Of H. P

Criminal Revision No. 116 Of 2012

Court: High Court Of Himachal Pradesh

Date of Decision: July 7, 2021

Acts Referred:

Constitution Of India, 1950 " Article 20(2)#Code Of Criminal Procedure, 1973 " Section 154, 173, 313, 378, 397, 401#Indian Penal Code, 1860 " Section 380, 457#Evidence Act, 1872 " Section 24, 25, 26, 27, 28, 29, 30

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Tek Chand Sharma, Nand Lal Thakur, Ram Lal Thakur Rajat Chauhan

Final Decision: Allowed

Judgement

Anoop Chitkara, J

1. Challenging the reversal of judgment of acquittal by the Appellant Court, i.e. learned Sessions Judge, Shimla, the convict has come up before this

Court under Section 397 read with Section 401 of Cr.P.C.

2. The facts of the case are as under:-

On 9th June, 2007, Shri B.N. Mehta, Shri Harji Lal and Shri Pritam Chand, President and Members of Shri Baba Balak Nath temple Jakhoo, informed

the Police Station East Shimla that Pujari of the temple had informed that locks of the temple are broken. The Pujari further told that he has kept the

broken locks with him. Based on this information, the police made entry in the daily diary register, Ex.PW-4/A and proceeded towards the spot. On

reaching the spot, the Investigator recorded statement of Shri B.N. Mehta under Section 154 of Cr.P.C. He informed the Investigator that he is

member of the committee Shri Baba Balak Nath temple at Jakhoo. Shri Dharam Pal, who belongs from Darlaghat, is Pujari of this temple. He is

working in the temple for the last four years. From 7th June, 2007, Shri Dharam Pal was on three days leave and in his place, he has deputed his

son, Ramesh Kumar (convict/petitioner) as Pujari of the temple. In the morning, Shri Harji Lal, Pradhan of the temple committee, informed him

telephonically at 6:00 a.m. that locks of the temple as well as cash box are broken. On this, the committee members reached the temple, where Pujari,

Ramesh Kumar, informed them that he had put locks on the gate at 9:00 p.m. and had gone to sleep in his residential quarter. When he woke up in the

morning, then he found that his door was bolted from outside. After that, he made phone call to Prakash, a lemon water seller. Said Prakash reached

his quarter and opened the door and thereafter when he visited the temple, then he found the cash box to be broken. He also found the belongings of

the temple scattered here and there and offerings i.e. Rs.10,000/- to Rs.15,000/- missing from the cash box. Based on this information, police registered

FIR No.102, dated 9.06.2007, under Sections 457 and 380 of IPC, Police Station East Shimla.

3. Police conducted investigation and the investigation revealed that one Trishool of the temple was used to break the cash box lying inside the temple.

As per the statement of Ramesh, he had put locks on the door at 9:00 p.m., whereas, the investigation reveals that such locks were not broken nor

there was sign of any breaking of any such locks or doors. Given the telltales of the spot, the investigator suspected the role of Ramesh Kumar, who is

son of the main Pujari, Shri Dharam Pal, who had asked the petitioner to work in his place, as he was on leave for three days. After that, police,

interrogated Ramesh Kumar and he confessed before the police that he had committed said theft. After that, the police recovered offering money

from Ramesh Kumar. According to the investigator, currency notes were in the folded condition, which are normally, folded while putting inside the

charitable box/Gullak. Based on this information, the police present its final report under Section 173 of Cr.P.C and launched prosecution.

4. Vide order dated 20.02.2008, the learned Judicial Magistrate First Class charged the petitioner, Ramesh Kumar, for house trespass punishable

under Section 457 of IPC and theft of Rs.10,000/- to Rs.15,000/-, punishable under Section 380 of IPC. The petitioner did not plead guilty and claimed

trial.

5. Shri Harji Lal, PW-1, reiterated the version, which he had mentioned in his statement under Section 154 of Cr.P.C. He further stated that the

accused had confessed before the police about his role in the theft, then after that the Investigator conducted search of his room and recovered

Rs.16,000/- to Rs.17,000/- lying in the books and copies. These currency notes were in the denomination of 10, 20 and 500 etc. Some currency notes

were old. PW-1, further stated that he was of the opinion that accused had committed theft from the window. In cross-examination, he admitted that

apart from giving offerings, devotees also give Dakshina on special occasions like birthdays, eclipse, planetary guidance etc. He further admitted that

the Pujari has right over such Dakshina which were given to him.

6. PW-2, Shri Pritam Chand, member of the committee corroborated the version of PW-1, and made similar statement. In his cross-examination he

also stated that currency notes were lying in the different pages of the books and copies. He admitted that during birthdays or other puja, the devotees

give offerings and Dakshina to Pujari and that belongs to him and the same is his personal property and temple has nothing to do with that.

7. The Investigator SI Narayan Singh appeared as PW-5 and admitted that the accused had confessed before him that he had committed the theft.

8. In the statement under Section 313 of Cr.PC, the accused claimed to be innocent.

9. The accused examined Shri Dharam Pal, Pujari, that is, his father, as DW-1. He stated that whatever the offerings people would gift, he used to

keep the same in his religious books and the same money belongs to him. He has specifically stated that the money that the police recovered from him,

belongs to him and it was not a stolen property. In his cross-examination, he again stated that the money, which the police recovered, was not stolen

property and, in fact, the same belongs to him.

10. Based on such evidence, learned Trial Court did not found the accused guilty and dismissed the case of the prosecution.

11. Challenging the acquittal, the State preferred an appeal under Section 378 of Cr.P.C and vide judgment dated 21.05.2012, learned Sessions Judge,

Shimla, allowed the appeal, convicted the accused and sentenced to undergo rigorous imprisonment for one year and fine of Rs.1000/- each under

Sections 457 and 380 of IPC with default clause.

12. Aggrieved by the judgment of conviction, the petitioner has filed the present revision petition before this Court under Sections 397 and 401 of

Cr.P.C.

13. I have heard the learned counsel for the parties and have gone through the record with utmost care.

14. The State sought prosecution based on the investigation, which was in the nature of circumstantial evidence. Admittedly, there was neither any

CCTV camera nor finger prints were lifted, which could have been easily assessed nor was any eye-witness of such theft. The only evidence the

Investigator gathered was in the nature of confession before him and based on such confession, the Investigator recovered currency notes in the

folded condition from the books and copies, which were kept in the premises, where he was residing with his father, the main Pujari.

15. Sections 24 to 30 of Indian Evidence Act deals with confession. The exception to such confession in this case would have been resorted to under

Section 27 of the Evidence Act. However, if a resort is made under Section 27 of the Evidence Act, then it should not violate Article 20(2) of the

Constitution. In the present case, it is not the case of the Investigator that the accused had made any disclosure statement under Section 27 Evidence

Act, which led to the recovery of currency notes. The premise of recovery is that telltales of the scene of crime points towards the involvement of the

temporary Pujari, that is, the petitioner herein. After that the Investigator interrogated the said Pujari, Ramesh Kumar, and he confessed to the police

about his involvement in the theft. Such confession is barred under Section 25 of the Indian Evidence Act, which says that no confession made to

police officer shall be proved as against a person accused of an offence. Simply because such confession was made in the presence of trustee would

not wriggle it out of the ambit of Section 25 of the Evidence Act and thus, it cannot be read as legally admissible evidence and has to be excluded.

16. The only other evidence is recovery of currency notes amounting to Rs.14300/- from the residential quarter of Shri Dharam Pal, where his son

Ramesh Kumar was also residing. It has come in the evidence of the trustees that people give offerings, Dakshina and other offerings on various

occasions like puja, birthdays, eclipse, planetary guidance and on so many other occasions. It is also admitted by PW-1 and PW-2 that offerings made

by people to the Pujari belong to him exclusively.

17. It has also come in the evidence of PW-2 Shri Pritam Chand, that the currency notes were lying in different pages of the religious books in the

house of Dharam Pal.

18. Shri Dharam Pal, appeared as DW-1 and stated that the said money is belonging to him. He testified that this entire money was the offering made

by the people to him on various occasions.

19. The analysis of the recovery from the various pages of the books prima-facie shows that Shri Dharma Pal was keeping it in the pages of the

books to protect the same from being stolen or misused. Furthermore, the house belongs to Shri Dharam Pal, where Ramesh Kumar was also residing

with him. Thus, simply because the Investigator recovered folded currency notes in small denomination, would not connect the same with the cash box

of the temple.

20. The best evidence could have been CCTV Camera or finger prints, which have not been resorted to by the investigator.

21. Given above, the evidence, which is legally permissible and is on the record points out the possibility of currency notes recovered from the house

of Shri Dharam Pal, indeed, belong to him and were not a stolen property. With this analysis and appreciation of evidence, there is nothing on record to

connect the petitioner, Ramesh Kumar, with the alleged theft. Thus, in entirety, the prosecution has failed to connect the petitioner, Ramesh Kumar,

with the aforesaid theft and, as such, his conviction is unwarranted.

22. I have gone through the judgment of the learned Trial Court, which is well reasoned and also the judgment passed by learned Sessions Judge,

Shimla, who has not discussed the aforesaid aspect.

23. Given above, the present petition is allowed and the judgment passed by the learned Sessions Judge, Shimla, is set aside and the judgment passed

by learned Trial Court is restored. Furthermore, since Shri Dharam Pal testified as DW-1 that the money belongs to him, as such, the same is ordered

to be refunded to him. In case the money is deposited in the treasury, then interest, if applicable, under the rules be also paid to Dharam Pal.

The petition is allowed.