
(2013) 04 MP CK 0049

Madhya Pradesh High Court

Case No: Criminal Revision No. 598 of 2005

Jagdish

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 1, 2013

Acts Referred:

- Evidence Act, 1872 - Section 114, 24, 27
- Penal Code, 1860 (IPC) - Section 380, 457

Hon'ble Judges: N.K. Gupta, J

Bench: Single Bench

Advocate: Hemant Namdeo, from the side of the Legal Services Authority, for the Appellant; G.S. Thakur, Panel Lawyer for the respondent/State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.K. Gupta, J.

The applicant was convicted for the offence punishable under Sections 457 and 380 of IPC and sentenced for two years rigorous imprisonment with fine of Rs. 500/- for each count vide judgment dated 23.11.2004 passed by the JMFC Narsinghpur (Shri D.R. Ahirwar) in Criminal Case No. 861/2004. In Criminal Appeal No. 28/2005 the learned Second Additional Sessions Judge Narsinghpur vide judgment dated 15.3.2005 maintained the conviction, but sentence was reduced to one year's rigorous imprisonment with fine of Rs. 500/- for each count. Being aggrieved with both the judgments, the applicant has filed the present revision. The prosecution case, in short, is that in the night of 26/27.10.2001 at about 2:00 AM the complainant Tek Singh (PW-1) was sleeping in his house. He heard some sound of utensils falling from the height, and therefore his wife Phula Bai (PW-8) shouted that there was a thief in the house. On her shouting, Tek Singh and Hiralal, brother of Tek Singh chased the thief and with the help of Beni Singh (PW-4) and Yashwant Singh (PW-3),

they held the applicant in a field where he kept 30 kg Soyabean in a bag alongwith 30 kg Urda in another bag. The applicant was brought from the field and handed over to the Kotwar. In the morning the complainant lodged an FIR Ex. P-1 at Police Station Themi District Narsinghpur. The Investigation Officer and Head Constable Rajesh went to the house of the complainant and recovered the applicant. The recovery memo Ex. P-3 was prepared. Thereafter on memo u/s 27 of the Evidence Act Ex. P-4 the applicant gave intimation about the stolen crop and the crop was seized vide the seizure memo Ex. P-5. After due investigation, a charge sheet was filed before the trial Court.

2. The applicant-accused abjured his guilt. He has stated that he was coming back from Maiher and in the night the complainant etc. caught him near the Belkheda without any reason. However, no defence evidence was adduced.

3. The learned JMFC Narsinghpur after considering the prosecution evidence convicted and sentenced the applicant as mentioned above, whereas in the appeal only the sentence was reduced.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the applicant has submitted that the applicant was held without his fault and it was not proved beyond doubt that he was the person who committed the burglary and theft. It is submitted that no one can run from the spot having 60 kg loads in two bags.

6. After considering the submissions made by the learned counsel for the parties, it is to be seen as to whether the present applicant was the person, who committed burglary in the house of the complainant. Tek Singh (PW-1) has stated that he is a handicapped person, and therefore he could not chase the culprit. Tek Singh and his brother Hiralal (PW-2) have accepted that Hiralal was not residing in the same house alongwith Tek Singh. He was residing in a second portion of that house. They have stated that the thief was seen by Phula Bai and on her shouting Hiralal followed the thief, whereas Phula Bai (PW-8) has accepted that someone stole one bag of Soyabean and one bag of Urda from her house and thereafter she was informed that it was the applicant Jagdish, who committed the offence. Phula Bai has stated that by falling of utensils, Tek Singh knew about the thief, and therefore she shouted. The evidence of the witness Phula Bai indicates that witness Hiralal went behind the thief after some delay. Neither Tek Singh nor Hiralal or Phula Bai could see the thief, who was leaving the house of Tek Singh.

7. Tek Singh and Hiralal have stated that the applicant was found in a field and two bags of Soyabean and Urda were kept by him 20 ft. away from him in the field, whereas Yashwant (PW-3) and Beni Singh (PW-4) have stated that the bags as well as the applicant were brought to the house of Tek Singh and ultimately he was handed over to the Kotwar. Kotwar Ramsingh was neither examined before the trial Court nor examined before the Investigation Officer. On the contrary, the Investigation

Officer recorded the memo u/s 27 of the Evidence Act and seized the bags of Soyabean and Urda from the applicant. When the stolen property was recovered and it was brought to the house of Tek Singh, then the memo u/s 27 of the Evidence Act was recorded, hence nothing new was known by the Investigation Officer, and therefore the memo u/s 27 of the Evidence Act has no evidentiary value. It cannot be admitted u/s 24 of the Evidence Act. When the stolen property was already recovered by the witnesses, then by such memo and recovery, the artificial evidence was created by the Investigation Officer. Hence, it cannot be said by the recovery memo Ex. P-5 that the stolen property was recovered from the applicant.

8. The defence of the applicant that he was moving from Maiher to his house and in the way at Village Belkheda he was held by the various persons including the complainant. The defence taken by the applicant appears to be acceptable, because neither Tek Singh nor his wife or brother could see the culprit, who left the house of the complainant Tek Singh after the burglary. If the thief would have been chased soon after the incident, then looking at the 60 kg loads, the culprit could not go very far from the spot and he could have been captured near the house of Tek Singh. But it is alleged that Hiralal and Yashwant Singh along with Beni Singh found two bags in a field and thereafter the applicant was found. It was not possible for the applicant to take 60 kg of weight at a time. If the applicant was held and brought to the house of Tek Singh, then all such facts must have been in the knowledge of Phula Bai, wife of Tek Singh, who was residing with Tek Singh in the same house, but Phula Bai has stated that it was informed by her husband after 15-20 days that it was Jagdish, who committed burglary and theft. By the statement of witness Phula Bai, it appears that the applicant was not brought to the house of Tek Singh and he was not caught soon after the incident. It appears that Hiralal and other witnesses found the bags lying in a field and thereafter they captured the applicant on the basis of suspicion the next day in the early morning, and therefore neither he was brought to the house of Tek Singh nor he was caught with the stolen property.

9. Under such circumstances, nobody had seen the culprit at the time of theft or soon after the burglary. No stolen property was recovered from the possession of the applicant. On the contrary, he was held by the villagers on the basis of suspicion when he was going from the side of that field from where the stolen property was recovered. Under such circumstances, the evidence given by Hiralal, Yaswant and Beni Singh appears to be doubtful. It is not proved beyond doubt that the applicant was the person who committed the offence or the stolen property was recovered from the possession of the applicant, and therefore no presumption u/s 114 of the Evidence Act may be applied. The learned JMFC as well as the learned Additional Sessions Judge have committed an error of law in convicting the applicant for the offence punishable under Sections 457 and 380 of IPC. Though there is concurrent finding of both the Courts below relating to the conviction on the basis of the facts, but it is mixed mistake of law, therefore an interference can be done in the present revision by this court.

10. On the basis of the aforesaid discussion, the revision filed by the applicant is hereby allowed. The conviction as well as the sentence directed against him for the offence under Sections 457 and 380 of IPC is hereby set aside. The applicant is acquitted from the charges of aforesaid offence by giving the benefit of doubt. The applicant would be entitled to get the fine amount back, if he has deposited the same before the trial Court.

11. The applicant is on bail, his presence is no more required, therefore it is directed that the his bail bonds shall stand discharged. A copy of this order be sent to the trial court as well as the appellate Court along with their records for information and compliance.