

## Shankar Singh Vs State of Madhya Pradesh

**Court:** Madhya Pradesh High Court

**Date of Decision:** Aug. 25, 2003

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 379

**Citation:** (2003) 4 MPHT 215 : (2003) 4 MPLJ 300

**Hon'ble Judges:** S.S. Kemkar, J

**Bench:** Single Bench

**Advocate:** J.A. Shah, for the Appellant; Sanjay Seth, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

The applicant has filed this revision against the judgment passed by Additional Sessions Judge, Khurai in Criminal Appeal No. 109/95, dated 10-

9-96 arising out of the judgment dated 2-9-95 passed by Judicial Magistrate First Class, Khurai in Criminal Case No. 258/94 whereby the

applicant has been convicted and sentenced for commission of offence u/s 379 of the Indian Penal Code and sentenced to one month simple

imprisonment and fine of Rs. 200/-.

The prosecution case in brief is that :--

On 5-10-97 a complaint was lodged by Komalchand (P.W. 1) that since last five days his bull is missing. On the basis of this complaint

investigation was done by the Police Station, Khurai and offence u/s 379 of the Indian Penal Code has been registered and the charge-sheet was

filed against the applicant. The prosecution in order to establish the charges adduced as many as 12 witnesses. The accused abjured his guilt and

took the defence that he has been falsely implicated because of enmity. In support of his defence the applicant did not led any evidence.

The Trial Court after considering the evidence on record convicted the applicant for offence u/s 379 of the Indian Penal Code and sentenced him

for one month's simple imprisonment and fine of Rs. 200/-. This order was challenged in appeal before the Additional Sessions Judge, Khurai in

Criminal Appeal No. 109/95, the Appellate Court dismissed the appeal and maintained the conviction and sentence passed by the Trial Court.

Heard Shri J.A. Shah, learned Counsel for the applicant and Shri Sanjay Seth, learned Counsel for the State. Perused the record.

After going through the judgments passed by the Courts below. I find no illegality or any jurisdictional error to be committed by the Courts below.

The learned Counsel for the applicant is unable to point out any infirmity in the impugned judgments of conviction so as to warrant interference by

this Court in its revisional jurisdiction.

As regard the sentence, Shri J.A. Shah, learned Counsel for the applicant has submitted that the incident took place in the year 1987, and the

applicant has already undergone sentence of seven days. There is nothing on record to suggest that the applicant is a habitual offender and,

therefore, prayed that sentence may kindly be reduced to the period already undergone.

Taking into consideration the totality of the circumstances, I am of the view that no useful purpose would be served in sending the applicant back

to jail now, and the interest of justice would be served by awarding a sentence for the period already undergone by the applicant together with fine

of Rs. 1,000/- instead of Rs. 200/- and in default of deposit of enhanced fine amount, to suffer simple imprisonment for the remaining period.

Thus, the revision filed by the applicant against his conviction and sentence is partly allowed.