

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 9th November ,2009*
Judgment Delivered on: 12th November, 2009

+ CRL.REV.P.168/2000

SHANKER DASS Petitioner
Through: Mr.Rajesh Mahajan, Advocate.

Versus

STATE Respondent.
Through: Mr.Manoj Ohri, APP.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 31.1.1986 at about 6.00 PM complaint had been lodged by Rajender Singh, Junior Engineer CPWD reporting that a red coloured Nissan truck DEG-6856 had illegally loaded 12 RS Joist girders from the store premises of 1688, Kasturba Gandhi Marg. Truck was driven by co-accused Vinod Kumar. On 1.2.1986 recovery of these girders had been effected from this truck which was parked outside the house of the present petitioner Shanker Dass. This stolen property belonged to the CPWD.

Complaint Ex. PW-1/A was lodged. Pursuant to this complaint FIR Ex.PW-3/A was registered by ASI Harphool Singh.

2. Information given in this complaint was by Puran Singh, Chowkidar, PW-2. As per his version there is no practice of permitting articles to be taken out from godown on the basis of any chits or slips; delivery of property was to be made by Junior Engineer Rajender Singh who is alone competent to deliver the property of the Department. Gurdeep Singh PW-4, on the relevant date was posted as in charge of police station Parliament Street. The recovery of the stolen property effected on the following day i.e. 1.2.1986 was in the presence of PW-4, PW-2 and PW-1. The recovery memo is Ex.PW-1/B has been attested by all the aforestated persons. The scribe of the document is SI Bachan Singh who has not been examined.

3. Trial Judge vide impugned dated 3.2.1993 had convicted both the accused persons namely Shanker Dass and Vinod Kumar under Sections 380/34 of the IPC. Vide order of sentence dated 4.2.1993 the present petitioner had been sentenced to undergo RI for three years and to pay fine of Rs.5000/-; in default of payment of fine to undergo RI for six months.

4. This judgment had become the subject matter of an appeal before the Appellate Court. The Appellate Court vide judgment dated 10.1.2000 dismissed the appeal. On 14.1.2000 arguments were heard on sentence and the sentence of the petitioner was reduced from RI three years to RI for six months with a further

direction to pay the fine amount of Rs.5000/- in default of payment of fine to undergo RI for 15 days.

5. The petitioner has since suffered his complete sentence and is on bail.

6. The petitioner has challenged the conviction.

7. On behalf of the petitioner, it has been submitted that the recovery memo Ex.PW-1/B is suspect; no reliance can be placed upon this document. Admittedly, as per the version of the prosecution, the truck was driven by co-accused Vinod Kumar; recovery witnesses have all given contrary and inconsistent versions; their versions do not inspire confidence. Attention has been drawn to their testimony i.e. the testimony of PW-1 who has in his cross-examination admitted that today he cannot locate the house from where the property was recovered which is at the back of the police station Tilak Nagar. PW-2 in his examination-in-chief has stated that the police had taken them to a house behind police station Tilak Nagar where a truck was found present; 12 girders were lying in the truck. It is submitted that in his entire examination-in-chief PW-2 is silent that this truck was parked in front of the house of Shanker Dass, this recovery stands belied. PW-4 is the only person whose stand has been consistent but it does not conform to the version of other two witnesses discussed supra. Attention has also been drawn to the defence version i.e. the testimony of K.K.Bedi PW-3 who has in his examination-in-chief deposed that on 1.10.1996 the

said truck No. DEG-6856 was lying empty; this evidence substantiates the defence of the petitioner; prosecution has not been able to establish that the recovery of the stolen property had in fact been effected from the truck which was lying parked out side the house of the present petitioner. In the absence of this, ingredients of Section 380 IPC are not attracted; benefit of doubt has accrued in favour of the petitioner; he is entitled to an acquittal.

8. The defence of the petitioner has all along been that he has no role to play in this offence; co-accused Vinod is his employee. The recovery of this property had been effected from the house of the maternal uncle of Vinod and this categorically finds mention in his statement under Section 313 of the Cr.P.C. The version of the co-accused Vinod inculcating the present petitioner under Section 313 of the Cr. P.C. cannot be read against the petitioner. For this proposition reliance has been placed upon a judgment of the Supreme Court reported in 2008(3) Crimes 112 Asraf Ali vs. State of Assam. This judgment in para nos.16 & 17 recites that in the absence of an incriminating circumstance having been put to the accused and he have been afforded no opportunity to explain the said incriminating circumstance, the same cannot be used against him. This proposition is not in dispute. This judgment, however, does not come to the aid of the learned defence counsel on the proposition sought be advanced by him.

9. Trial Court record has been perused.

10. The scope of revision by the High Court is limited. This revisional jurisdiction is a supervisory jurisdiction exercised by the Court for correcting a mis-carriage of justice. This power cannot be equated with the power of an appellate Court, nor it can be treated as a second appellate jurisdiction. Evidence in normal circumstances should not be re-appreciated unless any glaring feature is brought to the notice of the Court which would otherwise tantamount to a gross miscarriage of justice.

11. Ex.PW-1/B is the recovery memo. This recovery memo is dated 1.2.1996 has been attested by PW-1, PW-2 and PW-4; this document clearly recites that in front of the gate of house No.25/3, Ashok Nagar, Tilak Nagar, Delhi truck No.DEG-6856, 12 iron girders, RS Joist, having impression of SAIL, measuring 200x100 mm each, having length of 14 feet, on the complaint of Rajender Singh, pursuant to the information given by Puran Singh were recovered. This address i.e. 25/3, Ashok Nagar, Tilak Nagar is the address of the present petitioner i.e. Shanker Dass.

12. PW-1 on oath in Court has categorically stated that on 1.2.1996 he i.e. PW-1 along with SI Bachan Singh, Assistant Engineer K.K.Bedi went to Ashok Nagar, Tilak Nagar where truck No.DEG-6858 was standing; Shanker Dass was residing in that house; the 12 RS Joist iron girders Ex.P-1 to Ex.P-12 lying in the truck were taken into possession vide memo Ex. PW-1/B. Merely because in his cross-examination PW-1 has stated that today he

cannot locate the house, is not enough to disregard his otherwise consistent version. This witness has come into witness box in July 1999 whereas the recovery is of 1.2.1996 i.e. the three and half years prior. Witness is not supposed to have a photographic memory in order that he could recollect the details of the location of the house; this was a normal memory lapse due to long passage of time. PW-1 has given the detailed description of the stolen property which had been recovered from out side the house of the present petitioner.

13. PW-2 was the Chowkidar who had also joined the recovery proceedings. He has also corroborated the version of PW-1; he has not given the house number; yet otherwise his deposition is clear and categorical; recovery has been effected from a house behind police station Tilak Nagar; address of the house of the present petitioner shows that it is located within the jurisdiction of police station Tilak Nagar. This witness has also attested the recovery memo; his oral deposition coupled with the documentary evidence clearly establishes that the recovery of the stolen property had been effected from the truck which had been parked in front of the gate of the house of the petitioner.

14. So also is the version of PW-4. He has in clear terms stated that the recovery was effected on 1.2.1996 from truck No.DEG-6856 which is a Nissan truck of red colour, parked in front of house of Shanker Dass and the driver of the truck Vinod Kumar was sitting on the driver seat.

15. The version of DW-3 does not come the aid of the petitioner. DW-3 has only stated that RS Joist iron girders were not recovered from the house of the accused; this is also not the case of the prosecution; the case of the prosecution is that the recovery was effected from truck which had been parked outside the house of Shanker Dass.

16. Admittedly the disputed property was a stolen property; it belonged to the CPWD. The defence set up by the accused in his statement under Section 313 of the Cr.P.C. that the stolen property has been recovered from the house of the maternal uncle of Vinod Kumar had surfaced for the first time on 5.4.1991 i.e. at the time when his statement was recorded under Section 313 of the Cr.P.C. This defence did not find mention in the suggestions given to the prosecution witnesses i.e. neither to PW-1, PW-2 or PW-4; this was an afterthought and rightly rejected by the both the fact finding Courts below.

17. The conviction of the petitioner under Section 380 of the IPC calls for no interference; revision petition is without any merit; it is dismissed.

18. Trial Court record be returned.

(INDERMEET KAUR)
JUDGE

12th November, 2009
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