

High Court of Judicature at Allahabad

(Lucknow)

Neutral Citation No. - 2023:AHC-LKO:81346-DB

Reserved on:18.11.2023

Delivered on:12.12.2023

Court No. - 9

Case :- GOVERNMENT APPEAL No. - 624 of 1995

Appellant :- State

Respondent :- Balakram And Ors.

Counsel for Appellant :- Govt. Advocate

**Counsel for Respondent :- Prashant Kumar,D.K.Dikshit,Sachin
Chaturvedi,Sunil Kumar Maurya,Tung Nath Tiwari**

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Ms. Meera Tripathi, learned A.G.A. for the State.
2. This is an appeal by the State under Section 378 Cr.P.C. challenging the judgment and order dated 02.09.1995 passed by the 3rd Additional Chief Judicial Magistrate, Unnao in Criminal Case No. 1237 of 1994 arising out of Case Crime No. 41 of 1992, under Section 392/384 IPC, Police Station - G.R.P. Unnao, District- Unnao.
3. The prosecution case in nutshell is that on 27.02.1992 at 11.30 in the night when the informant- Raghunath Shah was traveling by Vaisali Express the accused Head Constable Balakram, Constable Gopal Singh Rana and Constable Tejbali Singh snatched away the

bag he was carrying which contained computer parts and also took away Rs.500/- from his pocket. The F.I.R. was lodged after 12 days on 11.03.1992. Charge sheet was filed against aforesaid three accused. Charges were framed against them under Section 392/384 IPC. As, they denied the charges, therefore, they were put to trial. The trial Court acquitted the accused. Hence this appeal.

4. The contention of learned A.G.A. was that the trial Court has improperly disbelieved the testimony of PW-1 and PW-2 (informant) and has acquitted the accused on conjectures and surmises.

5. It is not out of place to mention that Lower Court Record is not available. The appeal was admitted on 21.11.1995 and notices/Bailable Warrants were issued to respondents but no orders were passed summoning the Lower Court Records. It seems that the Lower Court did not have knowledge about filing of this Government Appeal and by the time the records were summoned the same had already been weeded out as is mentioned in the Office report dated 17.07.2017 and the letter of the A.C.J.M., Court No. 3, Unnao dated 15.07.2005 referred therein and the office report dated 10.03.2021, according to which, records were weeded out on 03.01.2001.

6. In view of the above, we do not have the original records before us. This leaves us with nothing else but the judgment of the lower Court.

7. Having perused the judgment and order of the lower Court we find that neither PW-1 nor PW-2 (informant) have testified about Tejbali Singh- respondent no. 3 having committed any offence and therefore, it has recorded a finding that no offence is made out against him. As regards two other accused/respondents no. 1 and 2 the trial Court has firstly found that the F.I.R. was lodged after 12

days and the explanation offered by the PW-2 in this regard is not at all plausible and acceptable. We have also perused the explanation as recorded in the impugned judgment and do not find it to be acceptable. The trial Court has also taken into consideration that so far as snatching of the bag containing computer parts is concerned, the prosecution witnesses have not mentioned as to which computer parts were they carrying in the bag. The contention of the PW- 2 that the computer parts were of the value of Rs.1,05,000/- has also been disbelieved by the trial Court, as, in the relevant year 1992 none of the computer parts were so costly in India. PW-2 has also stated that the computer parts belonged to Sardar Computer Part Company, Muzaffarnagar and it was being taken by him for repair to one Vimla Khanna, Karol Bagh, New Delhi, but, neither anybody from the Sardar Computer Part Company, Muzaffarnagar nor Vimila Khanna has been examined by the prosecution which could have proved the veracity of the said statement. Moreover, as already stated, in the year 1992 computers were not so costly. The trial Court has also recorded a finding that the statement of PW-2 as to the place of occurrence is also inconsistent and contradictory, moreover, it does not tally with the statement of PW-1, therefore, it has recorded a finding that the place of occurrence itself is not established. PW-2 has made inconsistent statement in this regard. At one place he has stated that incident occurred soon after the train had left Lucknow Railway Station, whereas, at other place he has stated that incident occurred after the train had left Unnao Railway Station, at yet another place he has mentioned that incident had taken place between Lucknow and Kanpur. The trial Court, thus, disbelieved his testimony. There is no recovery of any computer part or Rs.500/- allegedly stolen by the accused from their possession or on their pointing. All these factors have persuaded the Court below to acquit the accused.

8. We have considered the matter based on the judgment before us, as, the original records are not available and we do not find any error in the impugned judgment nor could any such error be pointed out by the learned A.G.A. for the appellant.

9. We, accordingly, **dismiss** the Government Appeal.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy, J.)

Order Date :-12.12.2023

R.K.P.