

Court No. - 15

Case :- CRIMINAL APPEAL No. - 627 of 2009

Appellant :- Anwar

Respondent :- State of U.P.

Counsel for Appellant :- Rajndra Prasad, Sunil Kumar Maurya

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Shekhar Gupta Advocate along with Sunil Kumar Maurya, learned counsel for the appellant as well as learned AGA for the State and perused the record.

Learned counsel for the appellant submits that notices were issued against the appellant as neither he nor his counsel was presented on the relevant date but now he (learned counsel for appellant) is ready to argue the appeal, today, the notices issued against the appellant be recalled.

Keeping in view the submission that learned counsel for the appellant is ready to argue, the notices issued against the appellant are cancelled.

2. The instant appeal has been preferred by appellant- **Anwar** against the judgment and order dated 26.02.2009 passed by the Additional District and Sessions Judge/ Fast Track Court No. 4, Lucknow, in Sessions Trial No. 854 of 2007, 'State Vs. Anwar' under Sections 411/413, Police Station Naka Hindola, District Lucknow, arising out of Case Crime No. 270/2007, whereby the appellant has been convicted for committing offence under Section 411 and 413 IPC and has been sentenced to undergo rigorous imprisonment of 2 and half years pertaining to Section 411 IPC and 3 years for the offence under Section 413 IPC along with fine and default clause.

3. The prosecution story as is emerging from the record is that on 26.7.2007, Sub Inspector of Police, Shri K.K. Yadav along with other police personnel was in search of declared offenders and they were standing at Nattha Chauraha, when they got information from the police informer that a person is standing near Haider Canal along with a stolen motorcycle. Believing on this information the police party proceeded to the Haider Canal and apprehended co-accused-Aman with a stolen motorcycle bearing Registration No. U.P. 32 A.X. 0540. The co-accused- Aman was apprehended and on being interrogated

informed that he has stolen this motorcycle with the help of appellant- Anwar and there are many other motorcycles which have been stolen by them and are kept at Charbagh Railway Station, Lucknow and the appellant- Anwar would also be there as he is trying to dispose of these motorcycles.

4. On this information, co-accused- Aman was taken to Charbagh Railway Station where the police party found the appellant - Anwar who however fled away and could not be apprehended, however, on the pointing of co-accused- Aman 05 motorcycles descriptions of which have been given in the FIR were recovered and a case against appellant and co-accused Aman, under Sections 41/411 IPC was registered at case Crime No. 270/2007, at Police Station Naka Hindola, Lucknow.

5. After investigation the charge sheet was filed against appellant- Anwar and co-accused- Aman, under Section 411/413 IPC.

6. The case was committed to the court of session and the charges against the accused persons were framed under Sections 41/411 and 413 of the IPC. The appellant and other co-accused person- Aman denied the charges and claimed trial.

7. The co-accused Aman later on confessed his guilt before the trial court and his file was separated and he was convicted and sentenced accordingly.

8. The prosecution in support of his case has presented P.W.1- Shri Krishna Kumar Yadav (Investigating Officer), P.W.2- Raj Singh (Inspector), P.W.3- Head Constable Jay Shankar Chaudhari, P.W.4- S.I. Indra Narayan Mishra, P.W. 5-Vidhik Raj Gupta and P.W.6- Sunder Singh Solanki. Apart from the oral evidence the prosecution has also relied on documentary evidence e.g. Fard Baramadgi, (Seizure Memo) (Ext. Ka-1), First Information Report (Ext. Ka-2), Site Plan (Ext. Ka-3), Charge sheet (Ext. Ka-4), FIR pertaining to theft of motorcycle of a motorcycle owned by Dilip Raj Gupta (Ex. Ka-5), written information with regard to the same motorcycle (Ext. Ka-5), FIR pertaining to Case Crime No. 82/2006, under Section 379 IPC (Ext. Ka-6).

9. After conclusion of the evidence of the prosecution the statement of appellant was recorded under Section 313 Cr.P.C. where he denied the evidence produced by the prosecution, however, he did not produce any evidence in defence.

10. The trial court after appreciating the evidence available on

record found the case of the prosecution proved beyond reasonable doubt and convicted and sentenced the appellant in the manner described in the second paragraph of this judgment.

11. Learned counsel for the appellant while drawing the attention of this Court towards the impugned judgement and order, vehemently submits that there is no iota of evidence so far as the instant appellant - Anwar is concerned. It is highlighted that the case of the prosecution is in terms that on getting a secret information from police informer the police party arrested co-accused- Aman with a stolen motorcycle and it was in his confessional statement the name of the instant appellant- Anwar has surfaced and thereafter the co-accused- Aman was taken to the Charbagh Railway Station as he had stated that about 05 motorcycles are kept there which is being attempted to be sold by the instant appellant- Anwar. It is also the case of the prosecution that on seeing the police party the appellant- Anwar fled away and could not be apprehended while 05 motorcycles allegedly stolen were recovered from Charbagh Railway Station.

12. It is next submitted that so far as the 05 motorcycles shown to have been recovered from the Charbagh Railway Station and are being termed as stolen motorcycles there is no First Information Report pertaining to the theft of three motorcycles and since these motorcycles have been allegedly recovered from a public place like Railway Station, the custody of the same could not be attributed to the appellant.

13. It is further submitted that the case of the prosecution is in doubt as there is no independent public witness of the alleged arrest and recovery of motorcycles despite there was opportunity and occasion both, with the police party to have procured independent public witnesses, thus the story as cooked up by the prosecution could not be believed.

14. It is also submitted that so far as the instant appellant- Anwar is concerned, the only evidence which is available against him is the confessional statement of co-accused- Aman which alone could not be sufficient to convict the appellant without there being any corroboration from any other clinching evidence.

15. Learned counsel for the appellant has also relied upon the law laid down by Hon'ble Supreme Court in ***Ajay Sethi Vs. State, decided on 30 August, 2017.***

16. It is also submitted that even if the case of the prosecution is taken on its face Section 413 of the IPC would have no

application as no evidence was tendered before the trial court that the appellant is a habitual offender and his conviction has been done in only one criminal case and no criminal history has also been alleged thus the trial court has materially erred in convicting and sentencing the appellant under Section 413 IPC and thus the impugned judgement and order is liable to be set aside and the appellant is liable to be acquitted.

17. Learned AGA on the other hand submits that there is no illegality or to say any irregularity committed by the trial court in convicting the appellant as there was ample evidence against him and the prosecution was able to prove its case beyond reasonable doubt.

18. It is further submitted that though the motorcycle has been recovered from the Charbagh Railway Station but the same would be deemed to be in the custody of the appellant - Anwar as he had been seen by the police party fledging away from Charbagh Railway Station and therefore there is no substance in the submission of learned counsel for the appellant that no motorcycle has been recovered from the possession of the appellant.

19. It is also submitted that as there was ample evidence with regard to the involvement of the appellant in stealing 05 other motorcycles there is no illegality done by the trial court in convicting him under Section 413 of the IPC, thus the appeal preferred by the appellant is liable to be dismissed.

20. Perusal of the record and the background of the submissions advanced by learned counsel for the parties would reveal that it is an admitted case of the prosecution that after getting information from the police informer, at first co-accused- Aman was arrested with a stolen motorcycle bearing Registration No. 32 A.X.0540 and it was in his confessional statement made before the police party when he was in the custody of the police, the name of the instant appellant has surfaced. Therefore, it is an admitted case of the prosecution that this Vehicle i.e. U.P. 32 A.X. 0540 has been recovered from the possession of co-accused- Aman.

21. Coming to the second part of the prosecution story it is also the admitted case of the prosecution that on the information provided by the co-accused- Aman in his confessional statement the police party proceeded to the Charbagh Railway Station and found the instant appellant who fled away after seeing the police party and from the Charbagh Railway Station 05 other motorcycles were recovered which were stolen by the co-accused - Aman and the appellant.

22. There can not be any dispute with regard to the proposition that the prosecution has not produced any witness which may claim that these 05 motorcycles which have been allegedly recovered from Charbagh Railway Station, Lucknow were owned by them and were stolen. No First Information Report has either been produced on record pertaining to the theft of these 5 motorcycles and admittedly these motorcycles have been recovered from an open space of Charbagh Railway Station, where hundreds of motorcycle were normally parked.

23. This Court is of the considered opinion that 05 motorcycles which have been allegedly recovered from the Charbagh Railway Station (from an open public place) could not be deemed to have been recovered from the custody of the instant appellant- Anwar, in presence of any reliable evidence, in this regard. The motorcycles were allegedly found at the Charbagh Railway Station in pursuance of statement given by co-accused- Aman and thus at the most these motorcycles may be deemed to be in the custody of co-accused- Aman, as these have been recorded in presence of his confessional statement and would be relevant under Section 27 of Indian Evidence Act to his extent alone. So far as the first motorcycle is concerned bearing Registration No. U.P. 32 A.X. 0540 at the cost of repetition it is emphasized that the same has been recovered from the possession of co-accused Aman and not from the possession of the instant appellant.

24. Therefore, having regard to the evidence which has been produced by the prosecution there was no whisper about the fact that 05 motorcycles shown to have been recovered from the Charbagh Railway Station were stolen or any FIRs with regard to the theft of these motorcycles was lodged at any Police Station nor they have been connected with any First Information Report lodged anywhere and the one motorcycle bearing Registration No. U.P. 32 A.X. 0540 is shown to be owned by P.W.5- Dilip Raj Gupta and has admittedly been recovered from the possession of co-accused- Aman.

25. It is further to be highlighted that the name of the appellant- Anwar has surfaced in the confessional statement of co-accused- Aman and if the testimony of all the witnesses of the fact of the prosecution is believed as it is, all the allegations of recovery of motorcycles is pertaining to co-accused - Aman and there is no whisper with regard to the appellant- Anwar except the confessional statement of the co-accused- Aman which in the considered opinion of this Court may not be sufficient alone to convict the appellant in absence of any corroborative evidence.

26. It is also to be emphasized that learned counsel for the appellant has correctly submitted that single case alone may not be sufficient to invoke Section 413 of the IPC as the same could only be invoked with regard to a person who is habitually dealing in stolen property and the whole prosecution case is silent as to whether any other FIR or criminal case has been lodged against the appellant and thus in the considered opinion of this Court a single case wherein the appellant is being tried by the trial court may not be sufficient enough to invoke Section 413 of the IPC, thus the contention of the appellant that conviction of the appellant under Section 413 of the IPC is erroneous, also appears to be correct.

27. It has to be recalled that a golden thread which runs through the web of whole criminal jurisprudence is that the prosecution is always obliged to prove its case beyond reasonable doubt and if there is any doubt which according to the court is reasonable, the benefit of the same must be extended to the accused as he is carrying initial presumption of innocence. In the considered opinion of this Court the evidence which has been led before the trial court was not sufficient enough to convict the appellant in the penal sections which have been invoked against him. Thus, for the reasons given herein before, in the considered opinion of this Court the trial court has committed illegality in convicting the appellant for committing the offence under Sections 411/413 of the IPC and therefore the impugned judgment and order appears to be erroneous and is liable to be set aside.

28. In view of above, the appeal preferred by the appellant-**Anwar** is **allowed** and the impugned judgment and order dated 26.02.2009 is hereby **set aside** and the appellant is **acquitted** of the charges framed against him under Sections 411/413.

29. The appellant appears to be on bail, he need not to surrender unless is wanted in any other criminal case.

30. However, the appellant within three weeks from today shall appear before the trial court and file his personal bond with two sureties of the amount of Rs. 25,000/- under Section 437-A of Cr.P.C. for his presence before the Hon'ble Supreme Court if the order of this Court is assailed by filing S.L. or Criminal Appeal, as the case may be.

31. A copy of this order, along with the trial court record be immediately sent to the trial court, for compliance.

Order Date :- 24.7.2024

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