

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2091 of 2008

Appellant :- Rakesh Soni

Respondent :- State of U.P.

Counsel for Appellant :- Banwari Lal Maurya, Anil Kumar Muarya, Banwari Lal Maurya

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. In compliance of the earlier order of this Court, the appellant - Rakesh Soni is present before this Court.
2. Heard learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.
3. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Rakesh Soni** against the judgment and order dated 02.09.2008 passed by Additional Sessions Judge/F.T.C.-4, Lucknow in Sessions Trial No.885 of 2007 (State vs. Guddu and another), arising out of Case Crime No.242 of 2006, under Sections 457, 380, 411, 413 I.P.C., Police Station Madiyaon, District Lucknow, whereby the appellant has been acquitted for committing offence under Sections 457, 380, 413 I.P.C. and has been convicted for committing offence under Section 411 I.P.C. and has been sentenced to undergo two years and six months rigorous imprisonment for committing offence under Section 411 I.P.C.
4. The necessary facts required for disposal of the instant appeal appears to be that an F.I.R. was lodged by the informant Dinesh Kumar Verma on 04.07.2006 at Police Station Madiyaon, District Lucknow against unknown persons alleging that he had gone to Sitapur at his ancestral home and on 29.05.2006 when he returned on 02.07.2006, he found that locks of his house were broken and a video camera of Sony brand, Kodak camera, Kardhani of silver, payal of silver and bichhiya of silver of the value of Rs.50,000/- appears to have been stolen by unknown persons.
5. On the basis of this written information, an F.I.R. at Case Crime No.242 of 2006, under Sections 457, 380, 411, 413 I.P.C., Police Station Madiyaon, District Lucknow and investigation commences.

6. On 04.07.2006 at about 09:40am., some accused persons are shown to have been arrested and certain incriminating articles were shown to have been stolen from different places were also recovered and on confession made by them it is revealed that some of the jewellery stolen from the house of the informant was sold to the appellant, who is owing a jewellery shop and in this regard the accused persons were taken to the shop of the appellant from where three pair of silver payal and four silver bichhiya were recovered. It is also pertinent to mention that in the recovery memo it is also shown that the informant of this case had arrived at the place of the arrest of the accused persons and he identified various articles stolen from his house and also accompanied the police to the shop of the appellant wherein also he has identified the silver payal and silver bichhiya allegedly recovered from the shop of the appellant. After investigation finding sufficient material charge sheet was filed against the appellant and other accused persons.

7. On the case being committed, the trial court framed the charges against the appellant under Sections 457, 380, 411, 413 I.P.C., to which the appellant and other accused person denied and claimed trial.

8. The prosecution in order to prove its case beyond reasonable doubt has relied on the testimony of P.W.-1 informant Dinesh Kumar Verma, P.W.-2 Constable Sanjay Singh, P.W.-3 Smt. Suneel Kumari Mishra, P.W.-4 Sub Inspector Shashi Kumar Pandey (Investigating Officer), P.W.-5 Rajendra Singh Bisht, P.W.-6 Dr. Arvind Kumar Srivastava and P.W.-7 Sub Inspector Mohd. Rais Khan and apart from it, the prosecution has relied on documentary evidence e.g. tehrir, F.I.R., chik F.I.R., G.D. Kayami, F.I.R. pertaining to the recovery of incriminating articles, recovery memo, site plans and charge sheet etc.

9. After conclusion of the evidence of the prosecution, the statement of the appellant/accused was recorded under Section 313 Cr.P.C., wherein he denied all the evidence produced by the prosecution, however, did not produce any evidence either oral or documentary nature in his defence.

10. The trial court after appreciating the evidence available on record did not find the case of the prosecution proved under Sections 457, 380, 413 I.P.C. and found the case of the prosecution proved against the appellant under Section 411 I.P.C. and convicted him under Section 411 I.P.C. and sentenced him in the manner described in the 3rd paragraph of this judgment. Aggrieved by the impugned judgement and order, this appeal has been preferred by the appellant.

11. Learned counsel for the appellant while referring to the impugned judgement and order vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellant for the offence, which has never been committed by him. It is further submitted that admittedly no connivance of the appellant was shown with other co-accused persons against whom allegation of committing theft was levelled and the role of the appellant has been shown only with regard to the fact that he has received stolen three pair of silver payal and some silver bichhiya from the co-accused persons knowingly that these articles are stolen.

12. It is vehemently submitted that it is admitted to the prosecution that the appellant is owing a jewellery shop and no specific/special mark of identification was shown on the jewellery allegedly stolen and it is evident on the face of the record of the trial court that in absence of any such special mark of identification how the jewellery found in the shop of the appellant has been identified. To elaborate further, it is submitted that in a jewellery shop various pairs of payals and bichhiya may be found and it would be impossible for any person in absence of any special mark on the stolen jewellery to identify the same in that heap of jewellery. Thus there is no identification of jewellery allegedly recovered from the shop of the appellant as to connect it with the items stolen by other accused persons.

13. It is vehemently submitted that identification of the jewellery as well as of the alleged stolen articles as stated by P.W.-3 Smt. Suneel Kumari Mishra, P.W.-5 Rajendra Singh Bisht and P.W.6 - Dr. Arvind Kumar Srivastava has itself belied the whole prosecution story as they have shown to have been identified incriminating articles in the police station while the recovery memo is shown to have been written at the place of arrest of the accused persons and after recovery of jewellery from the shop of the appellant is also claimed to have been identified by these witnesses on the spot and one of the lady, whose jewellery was also shown to have been stolen namely P.W.-3 Smt. Suneel Kumari Mishra, has stated in categorical terms that she was not present at the place where accused persons are shown to have been arrested nor any stolen articles were shown to her and she has not identified any article or jewellery.

14. It is vehemently submitted that statement of these three witnesses would itself reveal that whole story of the prosecution and arrest and recovery has been cooked up by the police in order to close the case in a hurry. It is further submitted that the

trial court has committed grave error in believing that the articles allegedly recovered from the shop of the appellant were stolen from the house of the informant of this case as no lady member of the house of P.W.-1 informant of this case has been produced, who could identify the ornament/jewellery, therefore, the conviction of the appellant for receiving the stolen jewellery is bad and the impugned judgement and order is liable to be set aside.

15. Learned A.G.A. on the other hand supported the impugned judgement and order passed by the trial court on the ground that no illegality appears to have been committed by the trial court as apart from the private witness prosecution has placed before the trial court various official witnesses including those police personnel, who have arrested the accused persons and there is ample evidence that after their arrest, the accused persons have confessed their guilt and have shown to have sold some of the jewellery to the appellant and to other jewellers and some jewellery is also shown to have been recovered from the shop of the appellant, therefore, no interference in the impugned judgment is required.

16. Having heard learned counsel for the parties and having perused the record, it is reflected that allegations against the appellant is only in terms that he has received some silver jewellery from the accused persons, who had stolen the same from the house of the informant. The case of the prosecution is also in terms that the accused persons, who have actually stolen the jewellery and other incriminating articles, were arrested by the police on 04.07.2006 and at the time of their arrest, Smt. Suneel Kumari Mishra, Shri Dinesh Kumar Verma (informant of this case), Shri Rajendra Singh Bisht and Dr. Arvind Kumar Srivastava (informant of other case) had arrived at the place of arrest of the accused persons, where they confessed their guilt and also that some silver jewellery has been sold to the appellant and other jewelers and all these persons (informant and other private persons) accompanied the police party to the shop of the appellant from where three pairs of silver payal and four silver bichhiyas were recovered. It is also reflected that the informant of this case namely Dinesh Kumar Verma has identified one silver payal and bichhiya as the jewellery stolen from his house. Interestingly in this regard, statement of P.W.-1 Dinesh Kumar Verma is important, who has acknowledged to have lodged the F.I.R. of the instant case and has stated earlier that the F.I.R. of the case has been lodged on 04.07.2006 (same day on which accused persons are shown to have been arrested) while in his examination-in-chief itself he has stated that it was after 10-12 days after lodging of the F.I.R. he got information that some accused persons have been arrested and some

incriminating articles have been recovered from their possession. He in a casual way has stated that some of the accused persons have confessed to have sold the jewellery to some jewellers and some jewellery was recovered from the jewellery shop of the appellant situated at Bakshi Ka Talab and he had identified one pair of payal and two pair of bichhiya. Perusal of the statement of this witness would reveal that he has not corroborated the case of the prosecution with regard to the arrest of the accused persons on 04.07.2006 and recovery of jewellery from the shop of the appellant as he has stated in categorical terms that it was after 10-12 days after lodging of the F.I.R., other accused persons, who had committed theft) were arrested by the police.

17. The main question, which stares on the face of this case is that no specific mark of identification was stated either in the F.I.R. or in the statement of the informant recorded under Section 161 Cr.P.C. on the jewellery shown to have been stolen and in absence of any such mark, how it was possible for the informant, who is male member of his house, to identify the jewellery allegedly recovered from the shop of the appellant. In support of the case of the prosecution so far as the appellant is concerned, there is only confessional statement of the accused persons, which could not be proved by virtue of bar contained under Section 26 of the Indian Evidence Act and the recovery of jewellery from the shop of the appellant. It is to be presumed that when it is admitted to the prosecution that the appellant is owing a jewellery shop, it may safely be taken that the jewellery shop was also containing many jewellery items kept therein and there may be many pairs of silver payals or bichhiyas and thus without any specific averments of the P.W.-1 Dinesh Kumar Verma pertaining to the identification of the payal, the same could not be taken to have been identified by him more so the whole story of the arrest of the accused persons on 04.07.2006 has been belied by the P.W.-1 Dinesh Kumar Verma himself when he has stated that the accused persons were arrested after 10-12 days after the theft. Interestingly one of the witness namely Smt. Suneel Kumari Mishra, who is also shown to have arrived at the place where co-accused persons are shown to have been arrested, has also denied her presence there and stated that she was called by the police to identify certain incriminating articles including jewellery in the police station and no incriminating articles has been recovered or accused persons were arrested in her presence. Similar is the statement of P.W.-5 Rajendra Singh Bisht he has stated to have identify the stolen articles at the police station and same is the statement of P.W.-6 Dr. Arvind Kumar Srivastava. Thus the story as cooked up by the police to get some of the articles

identified at the place of arrest of co-accused persons and also of taking co-accused persons to the shop of the appellant and identification of jewellery by the informant of this case is not established beyond reasonable doubt.

18. Thus keeping in view all the facts and circumstances of the case and the evidence produced before the trial court and for the reasons mentioned above, in the considered opinion of this Court, the case of the prosecution was not proved beyond reasonable doubt and the trial court appears to have committed illegality in convicting the appellant for the offence, which appears to have not been committed by him.

19. In result, the appeal filed by the appellant- **Rakesh Soni** is hereby **allowed** and the appellant is acquitted of all charges framed against him by the trial court. The impugned judgment and order dated 02.09.2008 passed by Additional Sessions Judge/F.T.C.-4, Lucknow in Sessions Trial No.885 of 2007 (State vs. Guddu and another) so far as it relates to the appellant is hereby **set-aside**.

20. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

21. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with two sureties of Rs.20,000/- before the trial court for the purpose of securing his presence before the Hon'ble Supreme Court, if any S.L.P. or to say any criminal appeal is filed against this judgment.

22. A copy of this order along with record of the trial court, if not required in any other case, be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date :- 19.9.2024
Anupam S/-