

HIGH COURT OF JUDICATURE AT ALLAHABAD

(SL No.53)

Court No. - 78

Case :- CRIMINAL APPEAL No. - 160 of 1985

Appellant :- Ram Swarey

Respondent :- State

Counsel for Appellant :- A.N.Mulla, Anoop Kumar, Virendra Singh Chauhan

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Virendra Singh Chauhan, learned counsel for the appellant and Sri Satyendra Tiwari, learned A.G.A. for the State.
2. The instant criminal appeal is filed against the judgment and order dated 10.01.1985 passed by Special Judge, Dacoity Affected Area, Banda in Sessions Trial No.224 of 1984, whereby the appellant herein was convicted for the offence under Section 411 IPC and was sentenced to undergo three years rigorous imprisonment. Other accused persons were acquitted for the offence under Sections 392 and 411 IPC and the appellant was also acquitted under Section 392 IPC.
3. Brief facts of the case are that on 19.05.1986 the informant Sri Gulam Ahmad Khan was on his duty as guard to the central railway Manikpur and he has proceeded towards Satna from Manikpur on D.S.T. special train. When the train stopped at Baramafi Station the informant was standing nearby the train, a person who was standing towards north of the train came near the informant and asked him why he is standing and then he kept

mum. In the meantime, two other persons came nearby and one person put some weapon on the back of the informant and the other person snatched a watch, purse, torch and bed sheet from him and they threatened him, if he reports to the police they will come and beat him. After sometime one RPF Constable came there and thereafter the informant reported the incident to the Station Master, on the basis of which, the instant FIR was registered at police station. During investigation an information received by Sub Inspector Sri Umakant on 26.06.1983 that some armed group of dacoits would assemble near the polls between Satna and Banda. On such information, the police team alongwith GRPF Officials and public witnesses went to the place as indicated by the informer and at 100 yards prior to that place the police team was divided in three parts. At around 11:00 in the night three persons assemble at the place indicated by the informer and after five minutes three persons came there and they were planing for dacoity. When they were trying to proceed to implement their scheme for dacoity, the police challenged them and arrested them. At the time of arrest, from the possession of accused Sharda a torch was recovered alongwith five cells, from the possession of the accused Ram Swarey, the appellant herein a HMT watch was recovered. The recovery memo was prepared. Subsequently the police raided the house of Ram Swaroop then one bed sheet and pajama were recovered from the house of Ram Swaroop in the presence of his brother Rajabua, which were also taken into possession. The recovered items were identified by the informant and his son before the Magistrate, however, they failed to identify any of the accused persons.

4. After investigation charge-sheet was filed and thereafter matter was committed for trial to the Special Judge, who in turn framed

charges against the appellant as well as other accused persons for the offence under Section 392 and 411 IPC, which they denied and claimed trial. To prove the recovery the prosecution has examined witnesses PW1 Maharaj Singh, who has supported the recovery of the aforesaid articles and also the process in which the police party has apprehended the accused persons while they were planning for dacoity. He has narrated the entire story in detail and stated that the HMT watch was recovered from the possession of the appellant herein and he was also supported the recovery of the knife, bed sheet and pajama etc. from the other accused persons. PW2- Shankar Lal, who was also the witness of the recovery has been declared hostile as he has not supported the prosecution case. PW3 is the witness of recovery of pajama and bed sheet. Though he identify Rajabua in whose presence the bed sheet and pajama were recovered by the police and he has also supported the signatures on the recovery memo, however, in cross he is stated that the bed sheet and pajama were lying on the cot and were not recovered from the possession of the accused. PW4 is the Investigating Officer, who has investigated the instant case. He has supported the prosecution story, after the registration of FIR on receiving the information with regard to the planning of dacoity by the accused persons and forming of police teams and thereby apprehending all the accused persons and recovery of the watch from the possession of the appellant herein and recovery of Torch from co-accused and the bed sheet and pajama in the presence of Rajabua, brother of the accused Ram Swaroop from his house. This witness has proved all the recovery memos and charge-sheet etc.

5. In his statement under Section 313 Cr.P.C., the appellant herein has denied the charges and recovery of the watch etc. and has not given any explanation with regard to the possession of the watch,

which was allegedly recovered from his possession.

6. The trial court having concluded the trial, had acquitted other accused persons holding that so far as the recovery of torch and pajama and bed sheet is concerned, they are common things, which can be found anywhere else with anybody. However, so far as the recovery of HMT watch is concerned, specification of which were given by the informant, has been found to be reliable and, thus, trial court has concluded that the appellant was found in possession of the stolen property. Since none of the persons have identified the accused persons, who has conducted the dacoity and robbed the informant, therefore, the charges under Section 392 IPC were found to be not sustainable, accordingly, the trial court has acquitted all the accused persons for the offence under Section 392 IPC and convicted only the appellant herein under Section 411 IPC for finding him in possession of the stolen property and sentenced him with the maximum sentence of three years under Section 411 IPC. The reason assigned in award of the maximum sentence is that under the provisions of Anti Dacoity Laws sentence of less than three years cannot be awarded.

7. Learned counsel for the appellant submits that the appellant is an innocent person and he has been falsely implicated in the instant case by the police team. There is no independent witness nor any watch as alleged, has been recovered from the possession of the appellant herein. Therefore, he seeks acquittal of the appellant from the instant case.

8. Per contra, learned A.G.A. submits that PW1- Maharaj Singh is an independent witness and has categorically stated with regard to the recovery of HTM watch from the possession of the appellant herein, which is also corroborated by the Investigating Officer in

his deposition. There is nothing on record to show any animosity on the part of the PW1, who is an independent witness or PW5, who is the Investigating Officer, therefore, there was no occasion for them to falsely implicate the appellant herein. There is no material on the basis of which the evidence of these two witnesses can be said to be unreliable, thus, learned A.G.A. submits that there is no merit in the appeal and prayed for dismissal of the instant appeal.

9. Having heard the rival submissions made by the learned counsel for the parties, this Court has carefully gone through the record of the case as noted hereinabove. So far as the recovery of watch from the possession of the appellant is concerned, PW1- Maharaj Singh has categorically deposed against the appellant and he has also deposed with regard to the entire manner in which the appellant was apprehended and the watch was recovered from his possession. The said recovery from the possession of the appellant is fully corroborated by the evidence of the PW5 and there is nothing on record to apprehend that they were falsely implicated or falsely deposing against the appellant herein.

10. In view thereof, there is no doubt that the watch was recovered from the possession of the appellant herein, however, there is no explanation on the part of the appellant herein so that the watch was in possession of the appellant for some other reason but to know that it was a stolen property. The watch recovered from the possession of the appellant herein was duly identified by the informant to be the same watch, which was robbed of from him. Thus the same was a stolen property. Therefore, this Court do not find any illegality in the conviction of the appellant herein, therefore, the conviction of the appellant herein is upheld for under Section 411 IPC.

11. So far as the sentence part of the appellant is concerned, learned counsel for the appellant submits that as per the statement under Section 313 Cr.P.C., the appellant was aged about 40 years on 09.01.1985, therefore, at present he is around 80 years of age and it was the sole implication of the appellant. No other case has ever been lodged against the appellant herein, nor he was ever convicted in any other case. He is a very poor person of a village and he has been falsely implicated in the instant case and the sentence awarded by the trial court is a maximum sentence, which was unwarranted. Therefore, learned counsel for the appellant seeks modification of the sentence and submits that the minimum sentence be awarded to the appellant in the instant case looking at the age and pendency of the appeal since more than 40 years and further he has also undergone some sentence during the pendency of the appeal and also during the trial. In view thereof, learned counsel for the appellant seeks that the appellant be sentenced for the sentence already undergone by him.

12. Looking at the fact that it was the first offence on the part of the appellant and also the age of the appellant, learned A.G.A. submits that the appropriate punishment be awarded in the instant case.

13. From the record, it is apparent that the appellant herein was apprehended on 27.06.1983 and further after conviction on 10.01.1985 he was released by this Court after filing the appeal on 29.01.1985, thus, he has already undergone around three months sentence.

14. Thus, looking at the totality of the circumstances as narrated hereinabove, further the age of the appellant which is around 80 years as on date and the pendency of the appeal since more than 40

years, and the offence under section 411 IPC is punishable with the sentence of imprisonment of either description which may extend to three years or with fine or with both.

15. In view thereof, in the considered opinion of this Court, no fruitful purpose would be served by directing the appellant to undergo further imprisonment at this span of time, therefore, the sentence already undergone by the appellant.

16. In view thereof, the appeal is partly **allowed**.

17. During the pendency of the appeal also, non bailable warrants were issued by this Court against the appellant, in pursuance of which, the appellant had appeared before the Chief Judicial Magistrate, Chitrakoot and subsequently he was released on bail. Therefore the bail bonds of the appellant herein are cancelled. Sureties are discharged. The trial court record be sent back to the trial court to be consigned as nothing further is required to be done in the instant case.

18. The articles i.e. the HMT watch, which was allegedly recovered from the possession of the appellant be handed over to its real owner, if he still survives.

Order Date :- 21.7.2025

Radhika

(Anish Kumar Gupta,J.)