

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.548 of 2003

1. Mangan, S/o Ramlal Khairwar, age 22 years.
2. Ramlal, S/o Chutai Khairwar, age 50 years.
3. Vijay, S/o Ramlal Khairwar, age 25 years.

All R/o Village Chiniya, P.S. Ramanujganj, District Surguja,
C.G.

---- Applicants

Versus

The State of Chhattisgarh, through S.H.O. P.S. Ramanujganj,
District Surguja, C.G.

---- Non-applicant

For Applicants: Mr. A.K. Prasad, Advocate.

For Non-applicant/State: Mr. Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/09/2015

1. The applicants herein namely Mangan, Ramlal & Vijay were tried for the offence punishable under Sections 457 & 380 of the IPC along with co-accused Tribhuvan in Criminal Case No.329/1995 before the jurisdictional criminal Court and they were convicted by the said Court and sentenced to RI for one year & fine of Rs.5,000/- each in both the offences separately. They preferred joint Cr.A.No.62/1999 (Mangan and three others v. State of Chhattisgarh) before the Court of Sessions (FTC), Ramanujganj and by the impugned judgment dated 23-10-2003, the criminal appeal was dismissed and the judgment of

conviction and order of the sentence was affirmed.

2. Present applicants three in number namely Mangan, Ramlal & Vijay preferred Cr.Rev.No.548/2003 in which they were enlarged on bail by this Court by order dated 20-11-2003.
3. Fourth accused Tribhuvan preferred separate Cr.Rev. No.105/2007 (Tribhuvan v. The State of Chhattisgarh) and this Court by final order dated 22-3-2007 while disposing of the revision remanded the matter to the Court of Sessions for hearing the appeal of co-accused Tribhuvan after affording him proper opportunity of hearing. Upon remand, the Court of Sessions in Cr.A.No.62/1999 by its judgment dated 18-4-2007 acquitted the said co-accused Tribhuvan finding that the prosecution has failed to prove the offences beyond reasonable doubt.
4. It is stated at the Bar by learned counsel for the parties that no revision has been filed against the order acquitting co-accused Tribhuvan from the aforesaid offences. Now, the revision preferred by three accused persons against the order affirming their conviction for the aforesaid offences is before this Court.
5. Mr. A.K. Prasad, learned counsel appearing for the three accused persons, would submit that the judgment of conviction recorded by the trial Court duly affirmed by the appellate Court is absolutely unsustainable and bad in law, as both the Courts below have committed grave illegality in relying upon the testimonies of Lalji Singh (PW-4) & Naimuddin (PW-7), who are common witnesses of memorandum and seizure. He would

further submit that Naimuddin (PW-7) is a pocket / stock witness of the police. He would also submit that 18 gunny bags were alleged to have been stolen by the present applicants and only ten bags have been seized from the possession of the applicants and other co-accused Tribhuvan. He would also submit that some of the gunny bags were seized near the house of Ramlal and Kedar Yadav who were neither made witnesses by the prosecution nor they have been examined in support of the prosecution. He would lastly submit that acquittal of Tribhuvan has been made on the basis of same set of evidence recorded by the trial Court and the State / prosecution has not challenged the same, as such, acquittal has become final, therefore, on the same set of facts, conviction of the applicants cannot stand and they are also entitled for acquittal on the principle of parity. In the circumstances, conviction of the applicants on merits is bad being perverse and contrary to record and consequently, sentence of one year RI and fine awarded to the applicants deserves to be set aside.

6. On the other hand, Mr. Anupam Dubey, learned Deputy Govt. Advocate appearing on behalf of the State/non-applicant opposes the revision and submits that concurrent findings recorded by the two Courts below holding the applicants guilty are findings of fact based on the evidence available on record. He further submits that though acquittal of Tribhuvan has not been assailed in a duly constituted proceeding, yet acquittal of

Tribhuvan will not come in the way of this Court in considering the revision filed by the applicants – co-accused on merits, as role of the present applicants in the crime in question is to be seen while deciding the present revision. Therefore, the revision deserves to be dismissed.

7. I have heard learned counsel appearing for the parties and perused the records of both the Courts below with utmost circumspection.
8. In order to consider the submissions raised by learned counsel for the applicants, it would be appropriate to notice the facts of the case in brief.
9. Case of the prosecution, in brief, is that complainant Rajkumar Singh (PW-1) was Salesman in the fair price shop at Village Chiniya and was running the said shop in the house of Ramlakhan Yadav. On the date of incident i.e. 27-2-1995, 18 bags of usna rice amounting to ₹ 8,000/- were stolen by the present applicants along with co-accused Tribhuvan which was reported vide Ex.P-1 and FIR was registered vide Ex.P-17. During investigation, memorandum statements of Kamal Kishore, Mangan, Ramlal & Tribhuvan were recorded in presence of Lalji & Naimuddin and pursuant to their memorandum statements, total 10 quintals of rice was recovered from their possession and they were charge-sheeted in which 9 prosecution witnesses were examined and 17 documents were produced, however, the defence examined 2 witnesses and no documents were produced.

10. Rajkumar Singh (PW-1) has deposed on oath that on 27-2-1995, 18 bags of rice were stolen from his shop by breaking the lock and vide Ex.P-2 lock was recovered which has been found to be proved. The first memorandum and seizure witness is Naimuddin in whose presence memorandum has been made by the present applicants in which he has stated that he is not resident of Village Chiniya and he has also stated that he is known to the police station and he appears as witness as and when directed by the police. He has further stated that rice was not recovered pursuant to the memorandum of the present applicants and it has been recovered as stated by the police and village persons. The fact remains that no recovery was made pursuant to the memorandum statements of the present applicants and it has been recovered at the instance of the police as such, both the Courts were unjustified in relying upon the testimony of Naimuddin (PW-7). Statement of Lalji Singh (PW-4) is equally not reliable for the aforesaid reason and suffers from same weakness.

11. Apart from this, according to Bihari Singh (PW-6), rice is said to have been seized near the house of Ramlakhan Yadav and Kedar Yadav as Exs.P-14 & P-15, but they have neither been made accused nor their statements have been recorded which itself makes the prosecution story doubtful, as otherwise they could have been examined as prosecution witnesses. Likewise, 18 bags of rice were said to have been stolen whereas, only 10 bags of rice were said to have been

recovered from the possession of the applicants and one co-accused Tribhuvan, and there is no reasonable explanation regarding the whereabouts of remaining 8 bags of rice. Thus, the prosecution has failed to prove the commission of offence of theft beyond reasonable doubt by the applicants herein. Therefore, the judgment of conviction as well as the order of sentence are liable to be set aside.

12. Apart from this, there is one additional ground for setting aside the judgment of conviction. Co-accused Tribhuvan, who is said to have stolen rice from the shop of complainant Rajkumar Singh, was tried for the offence along with the present applicants. All the accused persons were tried in a single trial in which one set of evidence was recorded and one set of documents were produced. Lalji & Naimuddin, both are witnesses of memorandum and seizure against the applicants as well as co-accused Tribhuvan. On remand by this Court, the appellate Court holding that the prosecution has failed to prove the guilt beyond reasonable doubt, acquitted Tribhuvan by judgment dated 18-4-2007 passed in Criminal Appeal No.62/1999 which is said to have become final on account of non-challenge by the State.

13. In the matter of **Prabhat alias Bhai Narayan Wagh and others v. State of Maharashtra**¹, Their Lordships of the Supreme Court have held that acquittal of six accused persons on the same set of evidence cannot justify conviction of

¹ (2013) 10 SCC 391

remaining accused and it has been held in paragraph 12 as under: -

“Having considered the facts and circumstances of the case, in our view, the view expressed by the trial court cannot be said to be unreasonable or perverse, warranting disapproval, especially when the trial Court had acquitted rest of the six accused persons, which was affirmed by the High Court on the same set of evidence. Taking into consideration all the facts and circumstances of the case, in our view, the appellants are entitled to the benefit of doubt.”

14. Likewise, in the matter of **Joginder Singh v. State of Haryana**², similar proposition has been made by Their Lordships of the Supreme Court holding that acquittal of co-accused granting them benefit of doubt, similar benefit must be extended to appellant-accused too, and held as under in paragraph 41: -

“In this regard, another aspect requires to be taken note of. The case of the prosecution was that Mohinder Singh had snatched away the gun and fired at Mithan Singh and Bimla. The learned trial Judge disbelieving the prosecution version had acquitted him. The High Court has given him benefit of doubt. We are of the considered opinion that regard being had to the totality of evidence, both oral and documentary, there was no reason to extend the said benefit of doubt to the appellant. The High Court has fallen into error on that score.”

15. Thus, examining the matter from both the angles, I find that the

2 (2014) 11 SCC 335

prosecution has miserably failed to bring home the offence under Sections 457 & 380 of the IPC beyond reasonable doubt, against the applicants. Secondly, Tribhuvan – co-accused had already been acquitted by the criminal Court on the set of evidence which is available for the present accused persons and that has attained finality. Therefore, the present applicants on merits as well on the principle of parity, are entitled to be acquitted of the offence under Sections 457 & 380 of the IPC.

16. As a fallout and consequence of aforesaid analysis, conviction and sentences of the applicants under Sections 457 & 380 of the IPC recorded by the trial Magistrate as affirmed by the appellate Court are hereby set aside and they are acquitted of the said charges.
17. Bail bonds of the applicants shall remain in operation for a period of six months from today in view of the provisions contained under Section 437A of the CrPC.
18. The revision thus, stands allowed.

Sd/-
(Sanjay K. Agrawal)
Judge