

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.681 of 2016

Arising out of PS.Case No. 762 Year 2014 Thana Ahiyapur District- MUZAFFARPUR

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Bittu Mahato, son of Dasai Mahato, resident of village- Vijay Chhapra, P.S-
Ahiyapur, District Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hari Kishore Thakur, Advocate

For the State : Mr. Sanjay Kumar Tiwary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2016

This revision application filed under Sections 397 and 401 of the Indian Penal Code is directed against the Judgment and order dated 29.4.2016 passed by the learned Sessions Judge, Muzaffarpur, in Cr. Appeal No. 76 of 2015 whereby the Judgment and order of conviction dated 28.7.2015 passed by the learned Judicial Magistrate, 1st Class, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 762 of 2014, corresponding to G.R. No. 6440 of 2014, Trial No. 119 of 2015 has been affirmed by the aforesaid Judgment and order of conviction dated 28.7.2015. The learned Magistrate has convicted the petitioner under Section 379 of the Indian Penal Code and sentenced him to undergo simple imprisonment for two years.

2. The First Information Report was registered on the



basis of oral statement of one Santosh Kumar as Ahiyapur P.S. Case No. 762 of 2014 under Sections 379 and 414 of the Indian Penal Code. In his oral statement, the said Santosh Kumar has stated that on 26th December, 2014 at about 6:45 P.M. he was returned home from Kejriwal Hospital by his motorcycle bearing registration No. BR06-AA-2977, Chassis No. MBLHAI0EWCGA, Engine No. JA1OEDCGA 47273 and parked the same in front of his home's main gate and went inside. When he came outside after some time, he found his motorcycle missing. He searched it in his surroundings but could not locate it. Thereafter, he borrowed a bike from his neighbour and went towards Mithanpura in search of his motorcycle. There he saw that a person riding on his motorcycle. He started shouting loudly '*chor-chor*'. The villagers chased that person and caught hold of him along with the bike. On information, the Police reached there and took away the apprehended person as well as the bike with it to the Police Station. On completion of investigation, the Police submitted charge sheet against the petitioner under Sections 379 and 411 of the Indian Penal Code.

3. On perusal of the materials collected during investigation and the Police report submitted under Section 173(2) of the Cr. P.C., the Magistrate took cognizance of the offence and charges were framed against the petitioner under Sections 379 and

411 of the Indian Penal Code. The petitioner denied the charges and claimed to be tried.

4. In course of trial, altogether seven witnesses including the Informant of the case were examined on behalf of the prosecution. All the witnesses examined on behalf of the prosecution, have supported the version of the informant. On appreciation of evidence, the learned Magistrate found the petitioner guilty for the offence of theft punishable under Section 379 of the Indian Penal Code, but the charge framed under Section 411 of the Indian Penal Code could not be proved and, hence, the petitioner was acquitted of the said charge.

5. The finding of the Magistrate recorded in para 10 of the Judgment dated 28.7.2015 passed in G.R. No. 6440 of 2014/Trial No. 119 of 2015 is as under:

“From the evidence on the record it appears that all the witnesses have supported the prosecution story. There is no contradiction in their statements in respect of the incident. The learned defence Counsel has submitted that the informant was not bonafide owner of the vehicle at the time of the occurrence therefore it does not amount to theft. In theft ownership is not necessary only possession is required and the informant had valid possession over the stolen vehicle at the time of the theft. However, office of D.T.O., Muzaffarpur vide letter no.606 dt. 21.04.2015 has verified informant Santosh Kumar as valid owner of the said vehicle. There is slight contradiction

regarding time of the occurrence in evidence of the witnesses. However all witnesses except PW-3 Ramroop Singh has supported time mentioned in FIR. The house of the informant in front of which theft took place and the place where the accused was caught hold by the villagers seems to be about one km distant which is corroborated by the evidences of all witnesses except PW-3 Ramroop Singh who has said the distance between both places is 4 kms. It may be one reason that many villagers of informant's village reached at the spot on listening "hulla" and most of the witnesses are resident of informant's village Shahbajpur. All witnesses except PW-3 Ramroop Singh have corroborated place of occurrence he said it was Primary school, Mithanpura and others have told it Middle School, Mithanpura. But the whole incident is corroborated by all the witnesses. PW-4 Ramsewak Sah is eyewitness and rest witnesses have corroborated each other. The accused has been caught and hold along with the stolen motorcycle by the villagers of Mithanpura village is corroborated by all the witnesses. The seizure list witnesses were not examined by the prosecution. However almost every witness has supported that seizure list was prepared at the spot itself by the police and two master-keys and a motorcycle was seized thereof, seizure list is also marked as Ext. 1. Master-keys are used for the purpose of stealing of vehicles and not common articles, master keys are also marked as Ext.1 and 1/1 and passion pro motorcycle bearing registration no. BR06 AA 2799 is marked as Ext.II. It seems that every witness examined by the prosecution have supported the prosecution's version and corroborated each other. The accused was caught soon after he stolen the said motorcycle by the villagers. However nobody has seen him stealing the motorcycle



from the informant's gate. But PW-4 has seen accused taking away the informant's motorcycle by his own eyes. Every witness has identified him in the court as the person caught on the spot in attempt to escape. As per illustration (a) of Section 114 (a) of Indian Evidence Act, 1872 the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The time of the occurrence and subsequent search of the motorcycle by the informant and his villagers, detection of the accused along with the motorcycle almost immediately after going along the road for some distance the accused along with the motorcycle the villagers of Mithanpura on "hulla" of "chor – chor" and informing Police with a purpose to hand him over to Police clearly indicate that it was the accused who committed the theft of the vehicle and he did not receive the motorcycle from any other person. There is no evidence on the record which shows that accused received the stolen motorcycle from anybody else. It is also proved that the said motorcycle has been recovered along-with the master-keys from the possession of the accused at the spot. The prosecution side has successfully proved the charge under Section 379 of IPC against the said accused person beyond all reasonable doubt."

6. The Judgment of conviction and order of sentence passed by the learned Magistrate was challenged in appeal. The appellate court found no illegality or irregularity in the judgment of the trial Magistrate, and, hence, by a reasoned order, the appeal was dismissed and the order passed by the Magistrate was affirmed. The

Judgment of the appellate court whereby the Judgment of the trial Magistrate was affirmed has been challenged in the present revision application.

7. After some arguments, learned counsel for the petitioner submits that he is confining his submission only on the question of sentence. He has submitted that after recording the conviction under Section 379 of the Indian Penal Code, the trial Magistrate has awarded two years simple imprisonment to the petitioner. By now the petitioner has already remained in custody for 20 months and 11 days. He has submitted that the petitioner has no past conviction and for the first time, he has been made accused in a criminal case. He has urged that under Section 379 of the Indian Penal Code, an accused may be punished with imprisonment of other description for a term which may extend to 3 years or fine or with both. There is no minimum sentence prescribed in law and it is upto the discretion of the court either to award sentence of fine or sentence till rising of the court or a sentence which may extend to 3 years. His contention is that the punishment awarded should not be retributive rather the same should be reformatory and if chance is given, the petitioner would prove himself to be a good citizen in future.

8. Learned counsel for the State has opposed the revision application.

9. Keeping in mind the materials on record and the concurrent finding of two courts, I see no illegality or irregularity in conviction of the petitioner under Section 379 of the Indian Penal Code. However, taking into consideration the submissions made on behalf of the petitioner, the sentence awarded to him by the trial Magistrate which has been affirmed by the appellate court is reduced to the period already undergone in custody. The petitioner is accordingly directed to be set at liberty.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
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