

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 622 of 2007

1. Ashok Kumar, S/o Kanhaiya Kurre, Aged about 37 years, resident of Village Singhanpur, P.S. Pithora, District Mahasamund (C.G.)
2. Asvan S/o Kauwa @ Nanku, aged 39 years, resident of Village Singhanpur, P.S. Pithora, District Mahasamund (C.G.)
3. Bhol Ram S/o Makhan Lal, aged about 38 years, resident of Village Singhanpur, Thana Pithora, District Mahasamund (C.G.)

---- Applicants

Versus

- State of Chhattisgarh, District Magistrate, Mahasamund (C.G.)

---- Respondent

For Applicants :	Shri Sumit Shrivastava, Advocate under the authority of Shri Sunil Sahu, Advocate
For Respondent/State :	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20/12/2016

1. This revision has been preferred against the judgment dated 21/11/2007, passed by the First Additional Sessions Judge, Mahasamund (C.G.), in Criminal Appeal No. 88/2007, whereby the judgment of trial Court in Criminal Case No. 986/2005 passed on 16/08/2007 of conviction and sentence against the applicants was upheld.

2. The prosecution case is this, that complainant Ramgopal (PW-1) lodged an FIR Ex.P/1 in Police Station, Mahasamund on 22/04/2005 alleging that he was carrying Rs. 22,000/- currency notes in a bag on his newly purchased motorcycle, which was for payment of remaining price to Shriram Auto Center, Arang. At about 8.30 a.m. he arrived at there Shriram Auto Center, but not finding the proprietor he was waiting for him. At the same time applicant Ashok Kumar approached him with whom he was acquainted. Applicant proposed that he should go and visit Khallari. Complainant agreed and came to Khallari on his motorcycle along with him. Applicant and his two offenders also accompanied him to Khallari. Applicant parked his motorcycle and kept the bag of currency notes in the Dicky of motorcycle, thereafter he went to urinal, when he came back he found the spark plug of motorcycle was taken out and the bag kept in Dicky containing currency notes of Rs.22000/- was not in its place. He saw the applicant and his companions running away from the spot, who did not stop on his call. He alleged that applicant and his companions committed theft. Registering the offence under Section 379 of IPC investigation was conducted, spot map Ex.P/2 was prepared. On 20/08/2005 identification parade was conducted vide Ex.P/3, in which complainant Ram Gopal (PW-1) identified the co-accused Bholaram and Ashwan Kumar. On 26/08/2005 applicant was taken into custody and interrogated, he gave a statement vide Ex.P/4 for recovery of currency notes of Rs. 10,000/-. The currency notes

were recovered vide Ex.P/5 and seized. On completion of investigation applicants were charge-sheeted.

3. Applicants were charged under Section 379/34 and co-accused Sunderlal was charged under Section 414 of IPC. Applicants were after trial convicted under Section 379/34 of IPC and sentenced with RI for 2 years and co-accused Sunder Lal S/o Dularwa Satnami was convicted under Section 414 of IPC and sentenced with RI for two years. The appeal by applicants before the Sessions Court was heard and decided by First Additional Sessions Judge, Mahasamund, in which the appeal was dismissed and the conviction and sentence passed by the trial Court was upheld. Co-accused Sunderlal preferred appeal separately, his appeal was allowed and conviction was set-aside by the appellate Court.

4. The grounds in this revision are these, that the judgment passed by the trial Court and the lower Appellate Court suffered from grievous infirmity, conviction has been recorded against the applicants, is not supported with evidence of prosecution. The finding of conviction is erroneous and contrary to the settled principles of law. For this reason, it is prayed that the revision may be allowed and the judgment of conviction against the applicants be set-aside.

5. It is submitted by counsel for the applicants that the evidence led by the prosecution is not legally admissible evidence, which

could not have been made the basis of conviction. Hence, applicants are entitled for benefit of doubt, in the alternative it is prayed that if this Court is not inclined to set-aside the conviction against the applicants, then at least the sentence part may be modified with imprisonment for period of custody already undergone them.

6. Considering the arguments submitted and the materials on record, the question is whether the conviction against applicants is supported by prosecution evidence and proof beyond reasonable doubt?

7. Ramgopal (PW-1) has stated that on the date of incident he had to go to Arang for repayment of remaining price of motorcycle purchased on the previous day. When he arrived there, he found that the shop was closed and he was waiting for the shop to open, when Ashok - applicant No.1 who was acquainted with him approached him and said that he also has purchased a vehicle and he was going to Khallari to perform Pooja of newly purchased vehicle, on his asking this witness accompanied him and went to Khallari temple. He had kept the amount of Rs.22,000/- in currency notes of Rs.100/- in the Dicky of his motorcycle. This witness, applicant Ashok and two other persons who were accompanying with applicant Ashok went to the temple in the meanwhile this witness went for toilet, at that time applicants took out the money kept in the Dicky and ran away. This witness beckoned the

applicants and asked where they are going, to which they replied that they were going towards temple. Later on this witness found that the bag containing currency notes was not inside the Dicky and the plug of his motorcycle was also taken out. This witness went to nearest Police Station of Mahasamund and lodged the report vide Ex. P/1.

8. In cross-examination he stated that at the time of recording of FIR, he has stated that he informed applicant Ashok that he had come to make the payment. After the incident, he saw the applicants going away, at that time he did not raise alarm to catch them. According to this statement it appears that he did not find out about the theft when he saw the applicants going away from the spot. Later on, when he checked his motorcycle and found the currency notes missing from the Dicky, he has made allegation against the applicant Ashok and his companion. In overall circumstance of the statement of this witness, it becomes clear, that he has not seen the applicants and his companion taking out the bag containing the currency notes from his motorcycle, it is only the circumstance which he has narrated and on that basis he has made allegation to Ashok and his companion took out the amount and the circumstances were that applicant Ashok knew about the currency notes in possession of this witness and that he found the applicant and his companion nearby before he find out that bag of currency notes was missing.

9. No doubt, on the basis of this evidence it can be held that on the date of incident, Ramgopal (PW-1) was in possession of Rs.22000/- in Dicky of his motorcycle, which were taken away without his consent, thus theft was committed. Another question on this point is whether theft was committed by the applicants? Statement of Ramgopal (PW-1) that the applicant and his companion who had removed the bag containing money from his possession this witness made this statement about his suspicion on this ground, that applicant Ashok knew about the money in his possession and that applicant Ashok and his companion were nearby the motorcycle, when it was found by him that the bag of money was missing.

10. Sub-Inspector P.L. Jaiswal (PW-2) has stated, that on 26/08/2005 he took applicant Ashok in custody and interrogated, who gave the memorandum statement Ex.P/4, whereby he stated that he will get recovered Rs.10000/- and on his instance currency notes of Rs. 10000/- were seized vide Ex.P/5 from co-accused Sunderlal. This investigation procedure of recording memorandum and conducting seizure is of no consequence and not a leading evidence against applicants. The statement of applicant Ashok before the Police officer in Ex.P/4 about confession of guilt, cannot be taken into consideration by a Court of law, as it is prohibited under the provisions of Section 24 and 25 of Indian Evidence Act. Hence, only the remainder part of the statement which simply states about the recovery of some article is to be take into

consideration. Such article recovered, when identified as article of theft completes the chain. Only then it can be held that such person who was in possession of such article of theft was either a thief or a receiver of stolen properties, as it is provided in Section 114 of the Evidence Act. The seized currency notes were not put to any identification neither this article can be subjected to any such identification procedure. Hence there had been no evidence that the article recovered at the instance of applicant Ashok was article of theft. No claim has been made on the amount seized from the co-accused Sunderlal. Hence this evidence brought by the prosecution before the trial Court was of no consequence and insignificant.

11. Rest of the evidence is regarding identification parade conducted for identification of applicants No. 2 & 3, if this evidence of Ex.P/3 is taken as it is, it only establishes that on the date of incident applicants No. 2 & 3 were the companion of the applicant No. 1 Ashok, their presence on the spot by itself not an evidence to show that they had committed theft. All that has been stated by the complainant against the applicants is statement based only on suspicion he has never seen the applicants removing the bag containing money from the Dicky of his motorcycle. Hence for this reason, this finding of conviction recorded by the trial Court and confirmed by the lower Appellate Court is totally perverse, which is required to be set-aside. For the aforementioned reason, this revision is allowed. The conviction and sentence recorded against

the applicants by the trial Court and the lower Appellate Court is hereby set-aside. Applicants are on bail. Their bail bonds are discharged. The order for disposal of the seized article passed by the trial Court and the lower appellate Court shall stand as it is.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

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