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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.123 of 2004

Order Reserved on : 23.12.2016

Order Passed on : 5.1.2017

Surendra Kumar Bairaagi, S/o Koshal Prasad Bairaagi, aged about 22 years,
Occupation Electrician, R/o Putkapuri, P.S. Pussaur, District Raigarh
(Chhattisgarh)

---- **Petitioner**

versus

State of Chhattisgarh

--- **Respondent**

For Petitioner	:	Shri Vipin Punjabi, Advocate
For State/Respondent	:	Shri Sanjeev Pandey, Government Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. ORDER

1. This revision has been preferred against the judgment dated 20.2.2004 passed in Criminal Appeal No.143 of 2002 by the 2nd Additional Sessions Judge, Raigarh by which the judgment dated 27.11.2002 passed in Criminal Case No.1705 of 1998 by the Chief Judicial Magistrate, Raigarh convicting the accused/Petitioner for offence under Section 379 of the Indian Penal Code (henceforth 'IPC') and sentencing him to undergo rigorous imprisonment for 6 months and to pay fine of Rs.200/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 month, has been affirmed.
2. The case of the prosecution before the Trial Court was that Complainant Prakash Kindo (PW-1) was employed as Manager in the District Industries Centre, Raigarh and he was allotted a

Rajdoot Motorcycle bearing registration No.CPL 5088 by the Government. On 12.11.1998, at about 10:30 a.m., he reached his office, i.e., the District Industries Centre, Raigarh, parked his motorcycle and began his official work in the office. At about 3:30 – 4:00 p.m., Onkar Das Bairagi and accused Surendra Kumar Bairaagi came to his office for the purpose of sanction of loan and at about 4:15 p.m. both of them went out of the office. At about 4:30 p.m., when Complainant Prakash Kindo (PW-1) came out of his office, he found that his motorcycle was missing. He searched for the motorcycle, but he did not find the same. A suspicion raised in his mind against Onkar and accused Surendra. Therefore, he lodged First Information Report (Ex.P-1) against Onkar and accused Surendra in Police Station Chakradharnagar, District Raigarh on 13.11.1998 on which Crime No.142 of 1998 was registered against both of them under Section 379 IPC. During the investigation, spot-map (Ex.P-2) was prepared. Memorandum (Ex.P-7) of accused Surendra was recorded and the Rajdoot Motorcycle bearing Engine No.19111355 and Chassis No.115358855 was seized from his house at Village Pusaur vide Ex.P-6. Surendra was arrested vide arrest memo Ex.P-8. On completion of the investigation, a charge-sheet was filed against Surendra under Section 379 IPC in the Court of Chief Judicial Magistrate, Raigarh.

3. The Trial Court framed charge against accused Surendra for offence punishable under Section 379 IPC. He denied the guilt and claimed for trial. Statements of witnesses were recorded before the Trial Court. Statement of accused Surendra was recorded under Section 313 of the Code of Criminal Procedure

(henceforth 'Cr.P.C.') in which he took a defence that he had presented an application for sanction of loan for the purpose of opening an electrical and motor winding shop. Complainant Prakash Kindo (PW-1) had demanded bribe of Rs.15,000/- for sanction of the loan. At that time, Pandey (Chhedi Lal Pandey, PW-2) was also present there and he had said that if the sum of Rs.15,000/- is given by the accused, his loan will be sanctioned. The Trial Court convicted and sentenced the accused/Petitioner as mentioned in the first paragraph of this order. Against the judgment of conviction and sentence passed by the Trial Court, the accused/Petitioner preferred an appeal, being Criminal Appeal No.143 of 2002 before the Court of Session at Raigarh. The 2nd Additional Sessions Judge, Raigarh, vide judgment dated 20.2.2004, dismissed the criminal appeal and affirmed the judgment passed by the Trial Court. Hence, this revision.

4. Learned Counsel appearing for the Petitioner argued that the contradictions and omissions in the statements of the witnesses have been overlooked by the Courts below. Important prosecution witnesses are interested witnesses. The memorandum (Ex.P-7) and the seizure of the motorcycle (Ex.P-6) have not been proved by the independent witnesses. Thus, the prosecution has failed to prove any case against the Petitioner. Therefore, Learned Counsel prayed that the revision may be allowed and the Petitioner may be acquitted of the charge framed against him.
5. Learned Counsel appearing for the State, supporting the impugned judgment passed by the Court below, opposed the arguments advanced by Learned Counsel appearing for the Petitioner.

Learned State Counsel submitted that the impugned judgment is impeccable and the conviction and sentence imposed upon the Petitioner do not warrant any interference by this Court.

6. The question arising for consideration in this revision is whether in view of the evidence available on record, the impugned judgment of conviction and sentence is sustainable or not?
7. The Trial Court has examined evidence of Prakash Kindo (PW-1), Chhedi Lal Pandey (PW-2), Ratan Lal Agrawal (PW-3), Bhagwat Patel (PW-4), Onkar Das Bairagi (PW-5), Manbodh (PW-6), Shiv Prasad Patel (PW-7), Ramdular (PW-8), Mohanlal Mehar (PW-9), Constable Tejram Patel (PW-10) and Assistant Sub-Inspector G.S. Dubey (PW-11) led by the prosecution. Shiv Prasad Patel, who has been examined on behalf of the prosecution as PW-7, has also been examined as a defence witness, being DW-1.
8. Prakash Kindo (PW-1) has stated in his evidence that the incident took place on 11.12.1998, but, according to the FIR (Ex.P-1), the incident is of 12.11.1998, on which date he had gone to his office at the District Industries Centre, Raigarh by the Rajdoot Motorcycle bearing registration No.CPL 5088 allotted to him by the Government. According to this witness, when he came out of his office at about 4:00 – 5:00 p.m., he found that his motorcycle was missing. He searched for the motorcycle, but he did not find the same. He lodged the FIR (Ex.P-1) on which he has proved his signature. Besides the name of accused Surendra, on the basis of suspicion, name of Onkar Das Bairagi was also recorded in the FIR (Ex.P-1). This Onkar Das Bairagi has later been examined as

a witness by the prosecution as PW-5. Onkar Das Bairagi (PW-5) has stated in his evidence that on the date on which he had gone to the District Industries Centre, Raigarh, he had met with Complainant Prakash Kindo (PW-1) there. Onkar Das Bairagi (PW-5) has also recognised accused Surendra, but he has turned hostile.

9. The FIR (Ex.P-1), in addition to the registration number of the Rajdoot Motorcycle, also contains the numbers of the engine and chassis of the motorcycle. The FIR also contains that sometime prior to the incident, accused Surendra had come to the office of Complainant Prakash Kindo (PW-1). But, the above particulars described in the FIR (Ex.P-1) have not been challenged in the cross-examination.
10. Chhedi Lal Pandey (PW-2), in his evidence, has supported the statement of Prakash Kindo (PW-1). Chhedi Lal Pandey (PW-2) was employed as an Inspector in the District Industries Centre, Raigarh. He has stated that there was a Rajdoot Motorcycle bearing registration No.CPL 5088 in the office of the District Industries Centre, Raigarh. This witness has further stated that on 12.11.1998 both he and Prakash Kindo (PW-1) were sitting in the office and accused Surendra had come to their office on this date and on their coming out of the office after going back of accused Surendra, they found that the motorcycle was theft. They doubted on Surendra. Thus, it is revealed from the evidence of both these witnesses (PW-1 and PW-2) that on the date of incident, sometime prior to the incident, accused Surendra had come to the office of the District Industries Centre, Raigarh and after sometime of his

going back from the office the theft of the motorcycle came to the knowledge of these two witnesses.

11. According to the prosecution case, memorandum (Ex.P-7) of accused Surendra was recorded by Chakradharnagar Police on 1.12.1998. To prove the memorandum (Ex.P-7) of accused Surendra, Shiv Prasad Patel (PW-7), who was, later on, also examined as a defence witness (DW-1) and Ramdular (PW-8) have been examined. Both these witnesses have proved their signatures on the memorandum (Ex.P-7). In his memorandum (Ex.P-7), accused Surendra has stated that he had hidden the motorcycle in his house at Village Pusaur and he has further stated in the memorandum that he shall make the motorcycle available for seizure. This memorandum (Ex.P-7) has been proved by Assistant Sub-Inspector G.S. Dubey (PW-11) in his evidence and his this evidence has not been challenged in his cross-examination nor any evidence has come in his cross-examination that Assistant Sub-Inspector G.S. Dubey (PW-11) had any *mala fide* intention against accused Surendra due to which he falsely implicated the accused in the crime in question. After recording of the memorandum (Ex.P-7) of accused Surendra, on 1.12.1998, the police, on making available the motorcycle by accused Surendra from his house at Village Pusaur, seized the same vide Ex.P-6. Manbodh (PW-6) and Mohanlal Mehar (PW-9) have been examined by the prosecution as seizure witnesses, who have proved their signatures on the seizure (Ex.P-6) from 'A' to 'A' and 'B' to 'B', but they have not supported the case of the prosecution relating to action of seizure of the motorcycle and have turned hostile. The seizure of the motorcycle (Ex.P-6) was done by

Investigating Officer Assistant Sub-Inspector G.S. Dubey (PW-11). He has stated in his evidence that he seized the motorcycle bearing engine No.19111355 and chassis No.115358855 on making available by accused Surendra from his house. He has proved his signature on the seizure memo (Ex.P-6) from 'C' to 'C'. This seizure memo also contains the signature of accused Surendra from 'D' to 'D'. The statement of Assistant Sub-Inspector G.S. Dubey (PW-11) made in respect of the seizure of the motorcycle has not been challenged in his cross-examination nor has it been emerged in his cross-examination that the accused has been falsely implicated by him in the crime in question. On behalf of the accused, one of the prosecution witnesses, Shiv Prasad Patel (PW-7) has been examined as a defence witness (DW-1). Shiv Prasad Patel (DW-1) has stated in defence of the accused that on 13.11.1998 the accused was present in Village Putkapuri and thus, he has taken the defence of alibi on behalf of the accused. But, the incident took place on 12.11.1998 and not on 13.11.1998. In the circumstance, the defence taken by Shiv Prasad Patel (DW-1) on behalf of the accused is baseless and it is also evident that this witness, who is also a witness of the memorandum (Ex.P-7) recorded by the prosecution, has connived with the accused.

12. Thus, Assistant Sub-Inspector G.S. Dubey (PW-11) is the only witness who has proved the memorandum (Ex.P-7) of the accused and the seizure of the motorcycle (Ex.P-6) and both the memorandum (Ex.P-7) and the seizure (Ex.P-6) bear the signature of the accused in respect of which the accused in his statement under Section 313 Cr.P.C. has not taken any defence. Now, the

only question remains to be adjudicated is whether based on the evidence of Assistant Sub-Inspector G.S. Dubey (PW-11) only the memorandum (Ex.P-7) of the accused and the seizure of the motorcycle (Ex.P-6) can be treated to be proved? In this regard, it has been observed by the Hon'ble Supreme Court in **Nathusingh v. The State of M.P., AIR 1973 SC 2783** as follows:

“2. Concurrent findings of fact conclude the case against the petitioner so far as his possession of unlicensed cartridges on the date and the time and place given in the charge are concerned. The fact that the two witnesses called from amongst the members of the public, namely, Raghunathsingh (P.W.1) and Gambhirsingh Tomar (P.W.2), had turned hostile was considered by the High Court and the Courts below. They had held that the two prosecution witnesses who had turned hostile could not be relied upon. Their evidence could not destroy the prosecution case or make it doubtful. The prosecution case is fully supported by Mahadevsingh (P.W.5), and Umashankar (P.W.6), who are police officers. The mere fact that they are police officers was not enough to discard their evidence. No reason was shown for their hostility to the appellant.”

On the same issue, it has been observed by the Hon'ble Supreme Court in **Prem Ballab v. The State (Delhi Admn.), AIR 1977 SC 56** as under:

“3. There is no rule of law that conviction cannot be based on the sole testimony of a Food Inspector. It is only out of a sense of caution that the courts insist that the testimony of a Food Inspector should be corroborated by some independent witness. This is a necessary caution which has to be borne in mind because the Food Inspector may in a sense be regarded as an interested witness, but this caution is a rule of prudence and not a rule of law : if it were otherwise, it would be possible for any guilty person to escape punishment by resorting to the device of bribing panch witnesses. The conviction of the appellants cannot, therefore, be assailed as infirm on the ground that it rested merely on the evidence of Bhanot and Bhatnagar.”

In **Karamjit Singh v. State (Delhi Administration)**, AIR 2003 SC 1311, the Hon'ble Supreme Court reiterated as under:

“8. Shri Sinha, learned senior counsel for the appellant, has vehemently urged that all the witnesses of recovery examined by the prosecution are police personnel and in absence of any public witness, their testimony alone should not be held sufficient for sustaining the conviction of the appellant. In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon.”

13. Since the statement of Assistant Sub-Inspector G.S. Dubey (PW-11), who investigated the crime in question, in respect of the memorandum (Ex.P-7) of the accused and the seizure of the motorcycle (Ex.P-6) has not been challenged in his cross-examination, nothing has emerged in his cross-examination that the accused has been falsely implicated by him in the crime in question, the memorandum (Ex.P-7) and the seizure (Ex.P-6) contain the signature of the accused and the theft motorcycle was recovered/seized on making available by the accused from his house, in the light of above observations of the Hon'ble Supreme Court, the memorandum (Ex.P-7) of the accused and the seizure of the motorcycle (Ex.P-6) are proved.
14. In view of the above discussion, I do not see any ground to set aside the concurrent finding arrived at by the Courts below.
15. Consequently, the criminal revision is dismissed. The impugned judgment of conviction and sentence is affirmed. The

accused/Petitioner is reported to be on bail. His bail bonds are cancelled and he is directed to be taken into custody to serve out the remaining part of the sentence awarded to him by the Trial Court.

- 16.** Records be sent back along with a copy of this order forthwith.

Sd/-
(Anil Kumar Shukla)
JUDGE