

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.627 of 2001

The State of Chhattisgarh

---- Appellant

versus

Rikhiram, aged about 32 years, S/o Sawantram, R/o Village Karamtara, P.S. Lalbag, Tahsil and District Rajnandgaon, Chhattisgarh

--- Respondent

For State/Appellant	:	Shri Neeraj Mehta, Panel Lawyer
For Respondent	:	Shri P.K.C. Tiwari, Senior Advocate with Shri Kripesh G. Kela, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

7.12.2017

1. This appeal preferred by the State is directed against the judgment dated 30.3.2000 passed in Criminal Appeal No.95 of 1995 by the 1st Additional Sessions Judge, Rajnandgaon acquitting Respondent/accused Rikhiram and reversing the judgment dated 31.8.1995 passed in Criminal Case No.734 of 1994 by the Judicial Magistrate First Class, Rajnandgaon convicting and sentencing the Respondent as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 379 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

2. Case of the prosecution, in brief, is that Complainant Sukritdas (PW3) had gone to Village Karamtara for delivering religious speech on 5.1.1994. In the night, he had slept in the house of Dhansai. In that night itself, at about 3:00 O'clock, Laxman Sahu, Dhansai and Lakhan Sahu came to him and told that some unknown persons have committed theft of 2 amplifiers and 1 battery charger installed in the *pandal* (tent). First Information

Report (Ex.P5) was lodged by Sukritdas (PW3) in Police Station Lalbagh, District Rajnandgaon. During investigation, memorandum statement (Ex.P1) of Respondent was recorded and on the basis of which 2 amplifiers and 1 battery charger were seized vide Ex.P2. On completion of the investigation, a charge-sheet was filed against Respondent Rikhiram and co-accused Ashok Kumar for offence punishable under Section 379/34 of the Indian Penal Code. Charge was framed against them under Section 379/34 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 10 witnesses. Statements of accused Rikhiram and Ashok Kumar were recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.
4. After trial, the Trial Court acquitted accused Ashok Kumar of the charge framed against him under Section 379 of the Indian Penal Code, but convicted and sentenced accused/Respondent Rikhiram which was reversed in appeal by the Appellate Court and Rikhiram was acquitted as mentioned in the first paragraph of this judgment. Hence, this appeal by the State.
5. Learned Counsel appearing for the State/Appellant argued that the Appellate Court failed to appreciate the evidence on record in true perspective and erred in law in acquitting the accused on the basis of conjectures and surmises. The prosecution had proved the guilt beyond doubt and as such the accused had rightly been convicted and sentenced by the Trial Court. There is no contradiction or

omission in the evidence of the prosecution witnesses. Hence, Respondent Rikhiram does not deserve acquittal.

6. Per contra, Learned Counsel appearing for Respondent Rikhiram supported the impugned judgment of acquittal passed by the Appellate Court and opposed the arguments advanced by Learned Counsel appearing for the State/Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. From the statements of Sukritdas (PW3), Durga Prasad (PW1), Laxman Sahu (PW2), Sunderdas (PW4), Lakhanlal (PW6) and Dhansai (PW8), it is clear that out of the articles brought by Sukritdas (PW3) for delivery of religious speech, 2 amplifiers and 1 batter charger were stolen. The case of the prosecution is mainly based on the circumstantial evidence. As per the prosecution story, 2 amplifiers and 1 battery charger were recovered from possession of Respondent Rikhiram on the basis of his memorandum statement and the same were seized. Kotwar Durga Prasad (PW1) has supported the said memorandum statement and the seizure memo. Manohar (PW5) has not supported the case of the prosecution. Vide Ex.P2, 1 amplifier of Ahuja make with SSA 150D mark, 1 amplifier of Ahuja make with SSB – 80 mark and 1 battery charger of 5 amps of Sivan make were seized from Respondent Rikhiram. Vide Ex.P7, 3 receipts were seized from Complainant Sukritdas (PW3). One receipt is numbered as 252, another receipt is numbered as 198 and one receipt was unnumbered. Original receipts are not placed on the record. Particulars of the theft amplifiers and battery charger are not

mentioned in the FIR and nor are mentioned in the statement of Complainant Sukritdas (PW3). The receipts which were seized vide Ex.P7 are not placed on the record. Cash memo No.252 and 198 relate to which article is not clear. It is not clear from the evidence on record that the articles seized vide Ex.P2 were the same which were theft from Complainant Sukritdas. In these circumstances, the charge framed against Respondent Rikhiram is not proved beyond doubt. Therefore, the finding arrived at by the Appellate Court is flawless and deserves to be affirmed. Ordered accordingly.

9. In the premises of aforesaid, the appeal preferred by the State is dismissed.
10. Records of the Courts below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge