

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2364 of 2000**

- State of Madhya Pradesh (Now in Chhattisgarh), through Police Station- Katghora.

---- Appellant**Versus**

- Jansingh, S/o Suklal Gond, aged 25 years, R/o Makhanpur, at present Tiwarta P. S. Pali Distt. Bilaspur.

---- Respondent

For Appellant/State	: Mr. Raghvendra Verma, G. A.
For Respondent	: Ms. Meenu Banerje, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****12/09/2019**

1. No one appeared on behalf of the respondent/accused, when the matter is called. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee on behalf of the respondent/accused.
2. Ms. Meenu Banerje, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court, is ready to argue the matter. Therefore, this Court has appointed Ms. Meenu Banerje, Advocate to argue the matter on behalf of the respondent/accused. Registry is directed to inform the High Court Legal Services Committee in this regard for doing the needful.
3. As per office note, record of the lower Court is destroyed on

01.06.2002 as per rules.

4. With the consent of the parties, the matter is heard finally.

5. This appeal has been preferred by the State against the order dated 5th November, 1998, passed by Judicial Magistrate First Class, Katghora, Distt. -Bilaspur in Criminal Case No.880/1998 whereby the respondent/accused has been acquitted of the offence punishable under Section 379 of IPC.

6. As per prosecution case on 03.09.1999, near about 5.00 pm to 6.00 pm complainant parked his motor-cycle bearing registration No. M.K.L./4716 at bus stand Village- Tiwarta and gone to market when he return, he did not found his motor-cycle in that place where he parked his motorcycle. Complainant lodged FIR before the Police Station Pali to this effect; and during investigation, stolen vehicle (motor-cycle) was seized from the accused/respondent.

7. The trial Magistrate, after appreciation of oral and documentary evidence available on record, acquitted the respondent/accused of the alleged offence holding that there is no dishonest intention of the accused to stole the vehicle of the complainant;. the complainant and the accused are relatives from maternal side and they lived together peacefully. The trial Magistrate further recorded a finding that prior to the incident, several times the respondent/accused was taken the motorcycle of the complainant and used the same; and at the time of incident, when he was taking the vehicle from the bus stand (place of occurrence), he informed the complainant that vehicle was taken by him, therefore, accused/respondent is entitled for acquittal of the charge levelled against him and accordingly acquitted the respondent of the offence under Section 379 of IPC by the impugned Judgment dated 5th November, 1998.

8. Being aggrieved & dissatisfied with the judgment of acquittal by the trial Magistrate, instant appeal under Section 378 (iii) of the Cr.P.C. has been preferred by the State challenging the same.

9. Learned counsel for the appellant/State submits that on the date of incident the vehicle was stolen by the respondent/accused from the place of occurrence and before taking the vehicle the accused did not inform the same to the complainant and, therefore, learned trial Magistrate has committed illegality in acquitting the accused/respondent of the aforesaid offence.

10. On the other hand, learned counsel for the respondent/accused submits that in this case, it is undisputed fact that accused- Jansingh was maternal nephew of the complainant. He also submits that both are relatives and many times he (respondent/accused) had taken the vehicle from the complainant. He further submits that the complainant in his statement has admitted the fact that accused and he himself are relatives from maternal side and it is also not disputed by the complainant that at the time of incident before taking the vehicle, the respondent informed him for use of his vehicle. He also submits that there is no *malafide* or dishonest intention of the respondent to stole the vehicle. Therefore, learned trial Magistrate is absolutely justified in acquitting the accused of the charge under Section 379 of IPC.

11. Heard counsel for the respective parties and perused the impugned order.

12. As per office report original record of the case is destroyed. As per office report, vide dated 13.12.2017, Incharge Officer of the Record Room (Judicial), District & Sessions Court, Bilaspur has informed this Court that original record of this case has been destroyed as per Criminal Rule, 518 on 01.06.2002, therefore, there is no document is available for reconstruction of the record. The consent of both the parties and as per material available in the judgment of the trial Court, this case is decided on merits.

13. A careful perusal of the judgment of the trial Magistrate, it appears that it is undisputed by both the parties that vehicle was belonging to the Nirmal Singh, who is registered owner and possession holder of the stolen vehicle and at the time of incident the said vehicle was parked near market bus stand. At the time of incident, the accused was taken the vehicle from the market and, thereafter, during investigation, it was recovered from the possession of the respondent/accused. The trial Magistrate, in paragraphs 11 to 13 of the judgment, has considered the entire evidence available on record and it is found that respondent/accused and complainant both are relatives from maternal side. Respondent was residing in the house of complainant- Nirmal Singh and prior to the incident, many times accused used the vehicle of the complainant for his personal use. On the date of incident also, the accused after using the vehicle intended to return it to the complainant. In paragraph 11 to 13 of the impugned judgment, the trial Magistrate has recorded a finding that the complainant & the accused are relative (from maternal side) and further considering the fact that prior to the incident the accused many times used the vehicle of the owner and there is no dishonest intention on behalf of the accused to stole the vehicle (motor-cycle), therefore, the learned trial Court has rightly acquitted the accused of the charge of 379 of IPC, in which I do not find any illegality or perversity warranting interference in the instant appeal.

14. Resultantly, the appeal preferred by the appellant being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge