

Ashok Kumar and anr. Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-17-2012

Appellant : Ashok Kumar and anr.

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. A.Usmani, Smt. Durgesh Gupta

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.368/1997 Ashok
Kumar & another VERSUS State of Madhya Pradesh Criminal Appeal
No.564/1997 Pyarelal VERSUS State of Madhya Pradesh
----- Shri A.Usmani, counsel
for the appellants in Criminal Appeal No.368/1997. Smt. Durgesh Gupta, counsel
for the appellant in Criminal Appeal No.564/1997. Shri G.S.Thakur, Panel Lawyer
for the State/ respondent. -----

JUDGMENT

(Delivered on the 17th day of October, 2012) Since both the appeals are arising out of the common judgment dated 31.1.1997 passed by the learned Second Additional Sessions Judge, Katni in S.T.No.267/ 1988, therefore, both the appeals are disposed off by this common judgment. -:- 2 -:- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 o

2. The appellants have preferred this appeal against the judgment dated 31.1.1997 passed by the learned Second Additional Sessions Judge, Katni in S.T.No.267/1988, whereby the appellants were convicted for the offence punishable under sections 397 and 398 of IPC and each sentenced for 7 years' rigorous imprisonment with fine of Rs.500/- for each count and in default of payment of fine, 6 months' additional rigorous imprisonment was directed for each count.

3. The prosecution's case, in short, is that, in the mid night of 2nd and 3rd May, 1987, the complainant Krishna Kumar (P.W.3) was sleeping out of his house. Two unknown persons, awoken him. In the meantime, his sister Jaggu Bai (P.W.5) came to the spot by shouting that some persons had held her family members. It was apparent that the robbers had entered in their houses and some of them were on the roof of their houses. Rakesh Gautam came to save the complainant Krishna Kumar then, he was also assaulted by those robbers. Ultimately, Krishna Kumar lodged an FIR, Ex.P/6 at Police Station Vijayraghavgarh at about 4.30 a.m. in the morning of 3.5.1987. The injured persons namely Ketki, Rampratap, Bhanudatt, Vishudatt etc. were sent for their medico legal examination and treatment. Dr.G.P.Pathak (P.W.1) examined all those four injured :- 3 :- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 of 1997 persons and gave his reports Ex.P/1 to Ex.P/4 respectively. Simple injuries were found to those four persons. After sometime, the appellants were arrested and an interrogation was initiated. No robbed property could be seized from the appellants. However, a memo under section 27 of the Evidence Act was recorded by Shri G.K.Tiwari, SHO (P.W.17) from the appellant Pyarelal that he has already given the trace of the robbed property in other cases. A test identification parade was arranged. The victims Onkardatt (P.W.10), Krishna Kumar Gautam (P.W.3) and Sudhakar Prasad had identified all the appellants in the test identification parade. A charge-sheet was filed before the ACJM, Katni, after due investigation. Case was committed to the Sessions Court, Jabalpur and ultimately, it was transferred to the Second Additional Sessions Judge, Katni.

4. The appellants abjured their guilt. They did not take any specific plea but, they have stated that they were falsely implicated in the matter. However, no defence

evidence was adduced.

5. The learned Additional Sessions Judge, after considering the evidence adduced by the parties, convicted the appellants for the offence punishable under sections 397 and 398 of IPC and sentenced them as mentioned above.

6. I have heard the learned counsel for the parties. -:- 4 -:- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 o

7. The learned counsel for the appellants have submitted that there was no named FIR against the appellants. No robbed property was seized from the appellants. Identification parade was not at all acceptable and therefore, there was no evidence against the appellants by which the appellants could be convicted for the offence punishable under sections 397 or 398 of IPC. Under such circumstances, it is prayed that appeals filed by the appellants may be accepted.

8. On the other hand, the learned Panel Lawyer has submitted that the trial Court has rightly convicted the appellants for the offence punishable under sections 397 and 398 of IPC and sentence directed by the trial Court appears to be appropriate.

9. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appeals filed by the appellants can be accepted?.

10. It is apparent that there is no named FIR against the appellants. FIR was lodged by Krishna Kumar (P.W.3) in which he did not mention the name of anyone. Vishudatt (P.W.6) has stated in his evidence that the appellant Pyarelal was present in the robbery and he was showing a torch on the faces of the victims. However, the testimony of the -:- 5 -:- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 of 1997 witness Vishudatt cannot be accepted because if he would have identified the appellant Pyarelal then, his name should have been mentioned in the FIR, Ex.P/6 or in the case diary statement of the witness Vishudatt. Under such circumstances, the entire case depends upon the circumstantial evidence. There are two circumstances against the appellants. Firstly a memo under section 27 of the Evidence Act, Ex.P/6-A recorded by the police from the appellant

Pyarelal. Secondly, the appellants were identified in the test identification parade. SHO Shri G.K.Tiwari (P.W.17) has stated that an interrogation took place with the appellant Pyarelal and he gave a memo, Ex.P/6-A. In that memo, it was mentioned that in the particular crime, no robbery could be committed and there was nothing with the appellant Pyarelal, which could be recovered. A confession before the police is not admissible under section 24 of the Evidence Act. A small portion of the confession can be accepted under section 27 of the Evidence Act, by which any new fact is known to the police. In the present case, where nothing has been recovered after recording of the memo under section 27 of the Evidence Act, it cannot be said that it was a confession under section 27 of the Evidence Act. On the contrary, it was not admissible under section 24 of the Evidence Act. Hence, the document, Ex.P/6-A does not have -:- 6 -:- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 of 1997 any evidentiary value. No robbed property has been seized from any of the appellants.

11. The test identification parade was arranged by the then, Tahsildar Shri G.P.Gotiya (P.W.11). He recorded a memo, Ex.P/5 of the test identification parade. If memo, Ex.P/5 is considered then, it would be clear from that memo that in presence of the witnesses Badri Prasad (P.W.2) and Surendra Singh (P.W.13), identification parade was arranged by Tahsildar Shri Gotiya and the victims Krishna Kumar (P.W.3), Onkardatt (P.W.10) and Sudhakar Prasad were given an opportunity to identify the appellants. All these 3 victims identified the appellants. Sudhakar Prasad was not examined, whereas Onkardatt (P.W.10) has stated that so many persons were lined up in a row and the accused persons were having some clothings on their heads and the police officer who was present at the time of identification, directed them to remove the clothes of their heads and therefore, he identified only those persons, who removed the clothes from their heads, whereas no single question was asked to the witness Krishna Kumar on this point at the time of his examination before the Court and therefore, Krishna Kumar did not prove the identification memo, Ex.P/5. -:- 7 -:- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 o

12. Identification memo is not a substantial piece of evidence. It was to be proved by the concerned witnesses in the Court. Since no memo was shown to the

witness Krishna Kumar and therefore, his identification of the culprits has no meaning. Badri Prasad, a witness to the identification parade has stated that Tahsildar Shri Gotiya was not present at the time when identification was done. On the contrary, he has stated that memo was prepared by the police officer. On the other hand, Surendra Singh (P.W.13) has turned hostile. He has stated that he had put his signature as directed by the Tahsildar Shri Gotiya. Shri Gotiya has stated that he arranged the test identification parade in the Tahsil office compound but, he could not say as to whether the other persons were added with the appellants at the time of identification having similar faces. He does not know that who arranged the line for that identification. If memo, Ex.P/5 is perused then, it would be clear that the accused persons were of age groups of either 23-24 years or 33-35 years but, persons who were directed to remain in the line were not of the similar age group. Jawahar Gotiya, aged 58 years also stood in the row, whereas Ram Prasad Kol aged 18 years was also directed to attend the identification parade. The witness Onkardatt has accepted that police officers were present at the time of the :- 8 :- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 of 1997 identification parade. Under such circumstances, where the identification parade was not arranged in the jail, it appears that so many police officials were present in that identification parade. There was no control of the Tahsildar upon the persons, who lined up in the identification parade. They were of different age groups and faces. Under such circumstances, that identification parade inspires no confidence. It is nothing but, a mockery of the identification parade. Under such circumstances, identification of the appellants had no meaning.

13. There was no named FIR against the appellants. No robbed property has been seized from the appellants. No proper identification parade was arranged by the authorized officers and therefore, there is no evidence against the appellants, so that they could be implicated in the crime of robbery or dacoity. The appellants could not be convicted for the offence punishable under sections 397 and 398 of IPC or any inferior offence of the similar nature. The learned Additional Sessions Judge, erred in convicting the appellants for the aforesaid offences. Hence, the appeals filed by the appellants appears to be acceptable and consequently, it is hereby accepted. The conviction as well as the sentence directed by the trial Court for the offence punishable under section 397 and 398 of IPC is hereby set aside.

The :- 9 :- Criminal Appeal No.368 of 1997 Criminal Appeal No.564 of 1997 appellants are acquitted from all the charges. They would be entitled to get the fine amount back, if they have deposited the same before the trial Court.

14. At present, the appellants are on bail. Their presence is no more required before this Court and therefore, it is directed that their bail bonds shall stand discharged.

21. A copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE 17 10/2012 Pushpendra

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