

Manoj Kumar Vs. the State of M.P.

Manoj Kumar Vs. the State of M.P.

SooperKanoon Citation : sooperkanoon.com/1045178

Court : Madhya Pradesh

Decided On : Jan-03-2013

Appellant : Manoj Kumar

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. A. Usmani

Judgement :

HIGH COURT OF MADHYA PRADESH JABALPUR Criminal Appeal No.12/1997

Manot Kumar Vs. State of Madhya Pradesh Criminal Appeal No.2338/1996 Nandu

@ Nand Kumar Vs. State of Madhya Pradesh

----- Present : Hon'ble
Shri Justice N.K. Gupta.

----- Name of counsel for
the parties: Shri A. Usmani, counsel for the appellants. Shri R.P. Tiwari, Public
Prosecutor for the respondent/State.

JUDGMENT

(Delivered on 3rd day of January, 2013) Both the appeals are related with the common judgment dated 19.12.1996 passed by the 2nd Additional Sessions Judge, Jabalpur in S.T. No.642/93, therefore, decided by a common judgment.

2. The appellants Nandu @ Nand Kumar and Manot have preferred these appeals against the aforesaid judgment, whereby the appellant Nandu @ Nand Kumar was convicted for the offence punishable under Section 397 of IPC and sentenced for seven years 2 Criminal Appeal Nos.12/97 & 2338/96 R.I. with fine of `250/- and in default of payment of fine, three months R.I. Similarly, the appellant Manot Kumar was convicted for the offence punishable under Section 394 of IPC and sentenced for three years R.I. with fine of `250/- and three months R.I. in default of payment of fine.

3. The prosecutions case in short is that, on 28.6.1991 at about 2:15 p.m. the complainant Ambika Prasad (PW-1) went to operate his account in Punjab National Bank near Bai ka Bagicha, Jabalpur. He came out from the Bank alongwith his son Abhay (PW-2), the appellants were standing in the side of the road and when the complainant Ambika Prasad passed from the place near to the appellants, they snatched a purse from the pocket of the complainant where upon the complainant assaulted the appellant Manoj, in the process purse fell on the earth and the complainant placed his leg on the purse, thereafter, the complainant Ambika Prasad held the appellant Manot then, the appellant Nandu assaulted him by the back of the sword. Nandu also assaulted Abhay by sword when he tried to save his father. The witnesses Anil (PW-3), Seeju (PW-4) etc. had rushed towards the complainant and thereafter the appellants ran away from the spot. The complainant Ambika Prasad immediately lodged an FIR Ex.P/1 at Police Station Belbagh, Jabalpur. The victim Ambika Prasad and his son Abhay were sent for their medico legal examination. Dr. A.K. Jain (PW-9) examined the victim Abhay @ Bunti at Victoria 3 Criminal Appeal Nos.12/97 & 2338/96 Hospital, Jabalpur and gave his report Ex.P/3. He found one linear abrasion on the left elbow and one linear abrasion on the left thumb to Abhay. Dr. Jain also examined the victim Ambika and gave his report Ex.P/4. He found a contusion on the back of the right knee to the victim Ambika Prasad. The injuries caused to the victims were simple in nature. After due investigation, a charge sheet was filed before the J.M.F.C. Jabalpur, who committed the case to the Sessions Court, Jabalpur and ultimately, it was transferred to the 2nd Additional Sessions Judge, Jabalpur.

3. The appellants abjured their guilt. They did not take any specific plea and no defence evidence was adduced.

4. The learned Additional Sessions Judge after considering the prosecutions evidence convicted the appellants Manot and Nandu for the offences punishable under Sections 394 and 397 of IPC respectively and sentenced as mentioned above, whereas the accused Jagdish was convicted for the offence punishable under Section 352 of IPC only.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that the victim was a retired police inspector having two sons appointed as police inspectors and therefore, a grave case was registered against the appellants unnecessarily. The witnesses Anil and Seeju were the friends of the victim Abhay son of the complainant therefore, the appellants were falsely implicated in 4 Criminal Appeal Nos.12/97 & 2338/96 the matter with the help of such cooked witnesses. In the alternate, it is submitted that if any offence is constituted against the appellant Manot then, it would be under Section 379 of IPC. Similarly, the offence committed by the appellant Nandu could be under Section 323 of IPC. They have faced the trial and appeal for last 15-16 years and therefore, it is prayed that they may not be sent to the jail again. It is also submitted that both the appellants remained in the custody for 8-10 days.

7. On the other hand, the learned Public Prosecutor has submitted that the convictions as well as the sentences directed by the trial Court appears to be appropriate. There is no basis by which any interference can be done at this stage.

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

9. Ambika Prasad (PW-1), Abhay (PW-2), Anil (PW-3), Seeju (PW-4) and Banwari Lal (PW-6) were examined as eyewitnesses. Out of them, the witness Banwari Lal

has turned hostile, whereas remaining witnesses have stated about the incident. Looking to the totality of the statements given by these witnesses, it appears that it was the appellant Manoj, who snatched a purse of the complainant from his pocket but the complainant gave a blow in his hand and therefore, the purse fell 5 Criminal Appeal Nos.12/97 & 2338/96 down on the earth and thereafter, the complainant kept his leg on the purse. No assault was done by the appellant Manoj, he simply tried to escape. The appellant Nandu assaulted the victim Ambika Prasad and thereafter, Ambika Prasad left the appellant Manoj. Learned counsel for the appellants has invited attention of this Court on various minor contradictions but such contradictions do not disturb the testimony of the complainant. FIR was lodged within a reasonable time and the testimony of the complainant was duly corroborated by Dr. A.K. Jain (PW-9) by proving the injuries of the victims Ambika Prasad and Abhay. Due to medical report, presence of the complainant Ambika Prasad is duly established and it is proved beyond doubt that some incident took place with the complainant and his son. The learned counsel for the appellants could not establish any connection of Sanju, son of the complainant, who was a criminal with the incident. It was nowhere established that the appellants were falsely implicated in the matter due to their quarrel with Sanju.

10. However, it is to be assessed from the evidence of the witnesses that what was the crime committed by the appellants. Initially, the victim Ambika Prasad has stated in the FIR Ex.P/1 that the appellants Nandu and Manot simultaneously snatched his purse from his pocket but before the trial Court, none of the witnesses has stated that the appellant Nandu was present with the appellant Manot from the very beginning or he tried to snatch 6 Criminal Appeal Nos.12/97 & 2338/96 any purse. Presence of the appellant Nandu was noticed by the witnesses when he assaulted the victims Ambika Prasad and Abhay. Looking to the versions given by all the witnesses, it would be apparent that when the appellant Manot snatched the purse of the complainant from his pocket, the complainant gave a blow on the hand of the appellant Manot and therefore, purse fell down on the earth and thereafter, the victim Ambika Prasad placed his leg on the purse. Under such circumstances, the assault was not in continuation to take the purse away but it was committed only to free appellant Manoj. Therefore, that assault caused by the appellant Nandu does not fall within the purview of Section

397 of IPC. It is possible that he might have sent the appellant Manoj, who snatched the purse but it is not proved beyond doubt that he had any common intention with the appellant Manot in snatching the purse and therefore, when he assaulted the victims, his intention was to free the appellant Manoj. Under such circumstances, the offence of the appellant Nandu cannot consider in continuation of the offence committed by the appellant Manot and therefore, the appellant Nandu cannot be convicted for the offence punishable under Section 397 of IPC. His crime falls within the purview of Section 323 of IPC only. The learned Additional Sessions Judge has erred in convicting the appellant Nandu for the offence punishable under Section 397 of IPC. However, the offence punishable under Section 323 of IPC is an inferior offence of the 7 Criminal Appeal Nos.12/97 & 2338/96 same nature as of Section 397 of IPC and therefore, the appellant Nandu can be convicted for the offence punishable under Section 323 of IPC under the charge of the offence punishable under Section 397 of IPC.

11. So far as the guilt of the appellant Manot is concerned, he snatched a purse from the pocket of the victim Ambika Prasad, therefore, initially it was a crime of the offence punishable under Section 379 of IPC. According to the Provisions of Section 390 of IPC, the offence of theft would be the offence of robbery, if during the theft or any carrying away the stolen property, the accused voluntarily causes or attempts to cause any instant hurt or wrongfully restrain etc. to the victim. In the present case, there is no allegation upon the appellant Manot that he tried to assault the victim Ambika Prasad or he tried to pick up the purse, which was kept below the leg of the victim therefore, the overt act of the appellant Manot indicates that his offence of theft was not converted into the offence of robbery. He did not use any criminal force upon the victim. He simply tried to get himself free when he was held by the victim therefore, the appellant Manot cannot be convicted for the offence of robbery. The learned Additional Sessions Judge has also erred in convicting the appellant Manot for the offence punishable under Section 394 of IPC. However, the offence punishable under Section 379 of IPC is an inferior offence of the same nature and therefore, the appellant Manot can be 8 Criminal Appeal Nos.12/97 & 2338/96 convicted for this offence under the charge of Section 394 of IPC.

12. So far as the sentence is concerned, both the appellants were of 22 years at the time of the incident. Since they were above 21 years of age therefore, the advantage of the Probation of Offenders Act cannot be given to them as of right. Looking to their overt acts, there is no reason to give them any benefit of probation. However, they have faced the trial and appeal for last 15-16 years and according to the learned counsel for the appellants, they are settled in their life and they remained in the custody for 8-10 days during the trial hence, looking to the offence committed by the appellant Nandu, it would be proper to impose some fine amount upon him. Similarly, the appellant Manot has committed the crime for the offence punishable under Section 379 of IPC and he also remained in the custody for 8-10 days and he is also settled in his life, under such circumstances, it would be proper to pass the jail sentence equivalent to the period for which he remained in the custody in addition with a fine of `1,000/-.

13. On the basis of aforesaid discussion, the appeals filed by both the appellants are hereby partly allowed. The conviction as well as the sentence directed by the trial Court against the appellants for the offences punishable under Sections 394 or 397 of IPC are hereby set aside. They are acquitted from the charges of offences punishable under Sections 394 and 397 of IPC. However, the appellant Manot is convicted for the offence punishable under 9 Criminal Appeal Nos.12/97 & 2338/96 Section 379 of IPC and he is sentenced with the jail sentence for the period which he has already undergone in the custody with fine of `1,000/-. He is directed to deposit the fine amount before the trial Court within two months from today, failing which he shall undergo for nine months R.I. Similarly, the appellant Nandu @ Nand Kumar is convicted for the offence punishable under Section 323 of IPC and fine of `1,000/- is also imposed upon him. He is also directed to deposit the fine amount before the trial Court within two months from today, failing which he shall undergo for three months R.I.

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

15. A copy of the judgment be sent to the trial Court alongwith its record for information and compliance. (N.K. GUPTA) JUDGE 03 01.2013 pnkj

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com