

Ganga Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-20-2013

Appellant : Ganga Singh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Sanjeev Kumar Singh

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CRIMINAL REVISION
NO.46/2013 Ganga Singh Vs. State of M.P.
..... Shri Sanjeev
Kumar Singh, counsel for the applicant. Shri Ajay Tamrakar, Panel Lawyer for the
State.

ORDER

(Delivered on the 20th day of March, 2013) The applicant is convicted for offence punishable under Section 411 of I.P.C vide judgment dated 30.7.2005 passed by the Chief Judicial Magistrate, Shahdol in Criminal Case No.1194/1997 and sentenced for one year's rigorous imprisonment with fine of Rs.500/-. In Criminal Appeal No.193 of 2005 the learned Additional Sessions Judge, District Shahdol vide judgment dated 31.12.2012 dismissed the appeal in toto. Being aggrieved with the aforesaid judgments passed by both the Courts below the applicant has preferred the present revision.

2. The prosecution's case in short is that on 18.9.1997 the complainant N. K. Pathak went to the Railway Station, Shahdol for his visit to Jabalpur. His son went to see him off at the Railway station. When he went back to the house he 2 Criminal Revision No.46 of 2013 found a burglary took place and along with other articles one gun was also stolen. During the investigation the gun was seized from the applicant. The complainant N.K. Pathak had lodged an FIR Ex.P/2 at Police Station Kotwali, District Shahdol and after due investigation a charge sheet was filed before the trial Court.

3. The applicant abjured his guilt. He took a specific plea that he was falsely implicated due to enmity and therefore, he examined one Sudama Choudhary (DW1) as a defence witness.

4. The learned Chief Judicial Magistrate, Shahdol after considering the evidence adduced by the parties, convicted and sentenced the applicant as mentioned above. The appeal filed by the applicant was dismissed.

5. I have heard learned counsel for the parties.

6. It is alleged by the prosecution that a double barrel gun of 12 bore was recovered from the applicant and memo Ex.P/6 was prepared. The witnesses of that memo including Anandi Prasad (PW2) has confirmed that the gun was found in the shop of the applicant whereas, the Sub Inspector Shankdhar Dwivedi (PW8) has also confirmed the seizure. Nothing could be brought in the cross examination of these witnesses. No enmity is shown of the applicant with the Sub Inspector Shankdhar Dwivedi. Under such circumstances, the witnesses cannot be disbelieved. The seized gun had the same serial number engraved upon it which was mentioned in 3 Criminal Revision No.46 of 2013 the FIR Ex.P/2 and, therefore there was no problem to identify the gun. Under such circumstances, it is proved that the applicant had the stolen property with him.

7. For keeping a gun a valid license is required and therefore, a gun cannot be purchased or obtained by anyone with any misapprehension. Under such circumstances, intention of the applicant can be presumed that he kept the stolen property with the knowledge that it was the stolen property. As per provisions of

Section 114 of the Evidence Act, it shall be presumed that a person who has the stolen property with him shall either be a thief or the person who kept the stolen property dishonestly. Under such circumstances, both the Courts below have committed no error in convicting the applicant for offence punishable under Section 411 of I.P.C.

8. So far as the sentence is concerned, it is apparent that the applicant was not a much literate person and therefore, he could not knot the gravity of the offence. As submitted by learned counsel for the applicant, he remained in the custody since last three months approximately and therefore, if it is considered that the applicant was the first offender the custody suffered by the applicant may be considered as a sufficient period for his sentence but some fine amount may be enhanced.

9. On the basis of the aforesaid discussion the revision filed by the applicant is hereby partly allowed. The 4 Criminal Revision No.46 of 2013 conviction directed for offence punishable under Section 411 of I.P.C is hereby maintained but sentence is reduced to the period which he has already undergone in the custody whereas the fine is enhanced from a sum of Rs.500/- to a sum of Rs.5000/-. In default of payment of fine, the applicant shall undergo for six months rigorous imprisonment in addition.

10. The applicant is in jail and therefore, office is directed to arrange for issuance of a supersession warrant so that the applicant may be released after deposit of the fine amount.

11. Copy of the order be sent to the trial Court as well as the appellate Court for information and compliance. (N. K. Gupta) Judge 20.03.2013 bina

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