

Shahnaz Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-18-2013

Appellant : Shahnaz

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri. A. K. Jain

Judgement :

HIGH COURT OF MADHYA PRADESH : AT JABALPUR Cr. R. No.1501/1999
SHAHNAZ Versus THE STATE OF MADHYA PRADESH Present : Honble Shri
Justice Rajendra Menon.

----- Shri A. K. Jain,
learned counsel for the petitioner. Shri Prakash Gupta, learned Panel Lawyer for
the State -----

Whether approved for reporting: Yes / No.

ORDER

(18/4/2013) Challenging her conviction for an offence under Section 392 of IPC and the sentence of two years imprisonment with fine of Rs.250/-, applicant has filed this revision under Section 397 of Code of Criminal Procedure and calls in question conviction ordered by Judicial Magistrate First Class, Gadawara on 4th May, 1998 in Criminal Case No.262/1997 and its affirmation in appeal by the Additional Sessions Judge, Gadawara vide order dated 1.10.99 passed in Criminal Appeal No.48/98.

2. According to the prosecution story it is alleged that on 24.1.97 at about 3 p.m. complainant P.W.1 Munnalal and P.W.2 Pappu Nath went to the house of the petitioner looking for one Rajni. It is stated that when the complainants went to the house, the petitioner invited them inside her house and thereafter asked Munnalal whether he would like to be entertained by the 2 petitioner. When Munnalal refused, it is alleged that she took out a knife and by threatening Munnalal snatched Rs.80/- from him. Munnalal is said to have lodged the FIR on the same day at 3 p.m. and thereafter the investigation was lodged and the prosecution ordered. The prosecution examined four witnesses namely, P.W.1 Munnalal, P.W.2 Pappu Nath, P.W.3 Sanjay Singh and P.W.4 ASI Suresh Khare. Petitioner gave her own statement and based on the material and evidence that came on record impugned action has been taken.

3. Shri A. K. Jain, learned counsel for the petitioner took me through the statements of all the four witnesses as indicated herein above, pointed out serious discrepancies in the same and sought for interference mainly on the ground that the findings recorded by the Courts below are perverse, contrary to material available on record and is unsustainable.

4. Shri Prakash Gupta, learned counsel for the State refuted the aforesaid and sought for affirmation of the order.

5. Having heard learned counsel for the parties at length and on going through the original records of the proceedings, it is seen that the P.W.1 Munnalal the complainant and his companion P.W. 2 Pappu Nath are the only witnesses to the entire incident. As both these witnesses failed to support the case of the prosecution and did not stand by their original statement recorded under Section 161 Cr.P.C, they were declared as hostile. A plain reading of the statement of these witnesses and the material on record goes to show that there are serious discrepancies which are as under :- (i) P.W.1 Munnalal in his statement says that when the incident took place, P.W.2 Pappu Nath and P.W.3 Sanjay Singh were with him. P.W.3 Sanjay Singh does not support this story and he says that he is only a witness to the seizure and investigation done by the Police after 4 p.m. 3 (ii) P.W.1 Munnalal in his original statement under Section 161 says that he along

with P.W.2 Pappu Nath went to the house of the petitioner searching for Rajni. However, in the Court both these witnesses say that while they were walking on the road when they met the petitioner, had a talk with her and thereafter she invited them to her house. (iii) P.W.1 Munnalal, the complainant in his statement comes out with a case that the 80 Rupees looted from him by the complainant consisted of one Rs.50 Rupees note, two 10 Rupees note and two five Rupees note whereas, the recovery made by P.W.4 the investigation officer ASI Suresh Khare, reveals that the recovery consisted of seven 10 Rupees note and two five Rupees note. That apart, both P.W.1 Munnalal and P.W.2 Pappu Nath have given a different version with regard to actual threat and looting by the petitioner. In his statement P.W.1 Munnalal says that the petitioner did not talk to him but looted the money, whereas, P.W.2 Pappu Nath says that the petitioner invited Munnalal for some entertainment, she used unparliamentary language. Thereafter, she looted the money by threatening and putting a knife on his neck. That apart, the investigating Officer has also indicated that he received the complaint at 4 p.m., thereafter went to the house of the petitioner and prepared the spot map, then the petitioner was brought to the police station and in front of P.W.3 Sanjay Singh petitioner is said to have admitted the commission of offence and thereafter at her instance, Rs.80/- and the knife was recovered from her house in the box in the evening when the investigating officer went to her house for the second time.

6. The defense of the petitioner to the effect that Rajni was a lady of loose character and the complainant Munnalal and Pappu Nath came to her house in search of the said Rajni and 4 thereafter falsely implicated her has been totally ignored by both the Courts below. That apart, the recovery and the investigation done is also very doubtful and it is not known as to why P.W.3 Sanjay Singh was summoned and statement of petitioner was recorded in front of P.W.3 Sanjay Singh in the Police Station.

7. Having considered the rival contentions, the serious discrepancies in the matter, I am of the considered view that the findings recorded by the Courts below is nothing but a perverse finding and on the same conviction of the petitioner cannot be affirmed. Learned Courts below have totally ignored to take note of serious discrepancies of the matter, ignorance of the aforesaid aspect of the matter is vital

and makes the entire prosecution case doubtful. It is therefore, a case where the applicant has been convicted for an offence based on a finding which is not properly recorded , in which statement of witnesses have not been properly considered and a perverse finding recorded is not sufficient enough to prove the guilt of the petitioner beyond reasonable doubt. That being so, it is a fit case where jurisdiction under Section 397 of Code of Criminal Procedure should be exercised to quash the aforesaid findings.

8. Accordingly this petition is allowed. Conviction and imprisonment ordered is quashed. Petitioner is acquitted of all the charges and the bail bonds are discharged. (RAJENDRA MENo.) JUDGE mrs. Mishra

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