

Kamlesh Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-11-2013

Appellant : Kamlesh Kumar

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. S.K.Dixit, Shri. Alok Tapikar

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.1186/1998 Kamlesh
Kumar VERSUS State of Madhya Pradesh Criminal Revision No.1502/1998 Anil
Kumar VERSUS State of Madhya Pradesh
----- Names of counsel for the
parties in Criminal Revision No.1186/1998 Shri S.K.Dixit, counsel for the applicant.
Shri Ajay Tamrakar, Panel Lawyer for the State/respondent. Names of counsel for
the parties in Criminal Revision No.1502/1998 Shri Alok Tapikar, counsel for the
applicant, appointed from the side of Legal Services Authority. Shri Ajay Tamrakar,
Panel Lawyer for the State/respondent.

ORDER

(Passed on the 11th day of March, 2013) These two revisions are connected with
the common order dated 29.9.1998 passed by the learned Additional Sessions

Judge, Chhatarpur in two different :- 2 :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 of 1998 appeals and therefore, these revisions are decided by this common order.

2. The applicants were convicted for the offence punishable under section 392 of IPC vide judgment dated 17.4.1997 passed by the learned Chief Judicial Magistrate, Chhatarpur in criminal case No.11/1989 and sentenced for two years rigorous imprisonment with fine of Rs.1,000/-. In criminal appeals No.42/1997 and 51/1997 vide judgment dated 29.9.1998, the learned Additional Sessions Judge and Special Judge, Chhatarpur, dismissed the appeals in toto. Being aggrieved with the judgments passed by both the Courts below, the applicants have preferred the present revisions.

2. The prosecution's case, in short, is that, on 28.7.1998, the complainant Shanti Bai (P.W.1) went to her sister-in-law's house at village Hatwara, Police Station Kotwali, District Chhatarpur. The complainant and other guests went for some Pooja (worship). When they were coming back to the house, two boys, who were standing in that street, came forward and one of them had snatched a golden necklace of the complainant. The second boy shown a hand-made pistol to the complainant and other witnesses and then, both of them started running. However, the accused persons were chased by the witness Girjashankar :- 3 :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 of 1998 (P.W.2) and other witnesses. Ultimately, the applicant Anil Kumar was caught by them. The applicant Anil Kumar told that the robbed property was with the other accused, who was Kamlesh Tiwari of Banda and who ran away from the spot. The held accused was taken to the Police Station Kotwali, District Chhatarpur and the complainant lodged an FIR, Ex.P/1. The applicant Anil Kumar has stated before the Police that the snatched necklace was with the co-accused Kamlesh and therefore, Kamlesh was also arrested. On interrogation, he informed about the necklace and therefore, a memo under section 27 of the Evidence Act was recorded from the applicant Kamlesh and thereafter, the necklace was seized. The entire necklace was duly identified by the complainant before the Sarpanch Deendayal Verma and a memo of identification, Ex.P/5 was prepared. After due investigation, a charge-sheet was filed.

3. The applicants abjured their guilt. The applicant Anil Kumar took a specific plea that he was a student and therefore, after giving the examination, he went to Jatashankar hotel for taking his dinner then, some persons asked his name and thereafter, he was taken to the Police Station Kotwali and he was falsely implicated, whereas, the applicant Kamlesh did not take any specific plea. However, no defence evidence was adduced. :- 4 :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 o

4. The learned Chief Judicial Magistrate, Chhatarpur, after considering the prosecution's evidence, convicted and sentenced the applicants as mentioned above, whereas, the appeals filed by the applicants were dismissed in toto.

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

6. The learned counsel for the applicants have stated that the applicants remained in the custody for more than 6 months and therefore, they may not be sent to the jail again, whereas, the learned counsel for the applicant Kamlesh has added that the applicant Kamlesh was only 19 years of age at the time of the incident and therefore, he should have been released on probation, as per the provisions of section 6 of the Probation of Offender's Act, 1958.

7. On the other hand, the learned Panel Lawyer has opposed the prayers made by the learned counsel for the applicants.

8. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced against the applicants in the case, it is apparent that the applicant Anil Kumar was caught red handed at the spot. Shanti Bai (P.W.1), Girjashankar (P.W.2), Paku @ Prem Chand (P.W.3) and so many other witnesses have stated that out of two boys, one snatched the golden necklace of the complainant Shanti Bai, whereas another one had fired from :- 5 - :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 of 1998 a hand-made gun and thereafter, both of them ran away. However, the applicant Anil Kumar was held soon after the incident. The applicant Anil Kumar took a plea that he was unnecessarily held by the witnesses and after asking his name, he was taken to the Police Station but, no evidence has been given by the applicant Anil

Kumar in defence. There was no confusion that the applicant Anil Kumar was held instead of someone else. If the applicant Anil Kumar was not involved in the crime then, he could not know the address of the co-accused Kamlesh, who took the golden necklace and therefore, it was proved beyond doubt that the applicant Anil Kumar was the person, who participated in the crime of robbery.

9. Similarly, the applicant Kamlesh was arrested and the robbed property was seized from him and that property was duly identified by the complainant in the identification proceedings. No doubt is created either in fact of seizure or identification. Under such circumstances, it was proved beyond doubt that the applicant Kamlesh was found with the robbed property soon after the incident and therefore, as per the provisions of section 114 of the Evidence Act, presumption of his crime shall be made. Since, he was arrested on the basis of the statement given by the applicant Anil Kumar, therefore, the presumption will be taken to the - :- 6 :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 of 1998 fact that he was the person, who snatched or robbed the necklace of the victim. Under such circumstances, the trial Court has rightly convicted the applicants for the offence punishable under section 392 of IPC and there is no basis by which any interference can be done in the conviction directed by the trial Court against the applicants.

10. So far as the sentence is concerned, it is apparent that the applicants have faced the trial, appeal and revision since the year 1989 i.e. for 23 to 24 years. It is possible that not they must have been settled in their lives and therefore, it would not be proper for them to send them to the custody. They were the youngsters at the time of the incident and the applicant Anil Kumar remained in the custody for more than 6 months, whereas the applicant Kamlesh, remained in the custody for more than 7 months in all and looking to the overt-act of these applicants, sentence of 6 months rigorous imprisonment appears to be sufficient for their crime. By considering the facts that the applicants were youths at the time of the incident and they were the first offenders, they have faced the trial, appeal and this revision for the last 22 years then, it is a good case, in which they may not be sent to the jail again and their sentence may be reduced to the period, which they have already undergone in the custody. -:- 7 -:- Criminal Revision No.1186 of 1998

11. The learned counsel for the applicant Kamlesh has raised an objection that the applicant Kamlesh was 19 years of age at the time of the incident and therefore, he should have been released on probation under the provisions of section 6 of the Probation of Offenders Act. Looking to the overt-act done by the applicant Kamlesh, who was a resident of Uttar Pradesh, he came into the territory of Madhya Pradesh, so that he should not be arrested and snatched a golden necklace from the complainant Shanti Bai with help of a country made pistol. Under such circumstances, it appears that it is not a case, in which the applicant Kamlesh would have been enlarged on probation. After passing of so many years, not it is not appropriate to call the report of the Probationary Officer for considering the question of probation under section 6 of the Probation of Offenders Act, 1958. Suppose if the applicant Kamlesh is not released on probation under section 4 of the Probation of Offenders Act, 1958 then, he shall be required to live with conditions of section 4 of the Probation of Offenders Act for atleast 1 or 2 years again, whereas, looking to his custody period, not he would be free from the present trial and revision. It is not proved by the learned counsel for the applicant Kamlesh that conviction is a problem for him for his services or otherwise and therefore, if the trial Court and the appellate Court did :- 8 :- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 of 1998 not consider the provisions of section 6 of the Probation of Offenders Act then, it is not required at this stage, after 22 years that a report may be called from the Probationary Officer and to consider the case of the applicant Kamlesh for probation. It would be a hardship to the applicant himself and therefore, at present, it is not required to call a report of the Probationary Officer at this stage. Looking to the crime committed by the applicant Kamlesh, he could not be released on probation.

12. On the basis of the aforesaid discussion, the revision petitions filed by the applicants are hereby partly allowed. Conviction directed by the trial Court for the offence punishable under section 392 of IPC is hereby maintained but, their sentence is reduced to the period, which they have already undergone in the custody. There is no change in the fine amount.

13. The applicants are on bail. Their presence is no more required before this Court, however, they are directed to deposit the fine amount, if it is not deposited so far. It is further directed that their bail bonds shall stand discharged, if fine is found deposited. -:- 9 -:- Criminal Revision No.1186 of 1998 Criminal Revision No.1502 o

14. A copy of the order be sent to the trial Court as well as to the appellate Court along with their records for information and compliance. (N.K.GUPTA) JUDGE 11 3/2013 Pushpendra

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