

Rajesh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-15-2013

Appellant : Rajesh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. S.K. Sharma

Judgement :

1 Cr.R. No.561/2013 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR SINGLE BENCH: HONBLE SHRI JUSTICE A.K.SHRIVASTAVA CRIMINAL REVISION NO.561/2013 APPLICANT : Rajesh S/o. Gyan Singh, R/o. House of Ghanshyam, Barela Gaon, Lalghati, Bhopal (M.P.) Versus RESPONDENT: State of M.P. ----- Applicant by Shri S.K. Sharma, Advocate. Respondent/State by Shri Pushpraj Singh, Public Prosecutor. -----

ORDER

(15.05.2013) This revision application under Section 397/401 of Cr PC has been filed by the applicant against the judgment of conviction and order of sentence dated 28.02.2013 passed by learned Special Judge (Attrocity) Bhopal dismissing the criminal appeal No.436/2012 and thereby affirming the judgment of conviction and order of sentence dated 30.04.2012 passed by learned Judicial Magistrate, First Class, Bhopal in Criminal Case No.455/2004 convicting the 2 Cr.R.

No.561/2013 applicant under Section 379 of IPC and thereby sentencing him to suffer imprisonment of one year RI and fine of Rs.500/- and in default of payment of fine, further RI of one month.

2. The applicant was tried for the charge punishable under Section 379 of IPC for stealing the motorcycle of the complainant Dr. Narendra Jain. Learned Trial Court on the basis of evidence placed on record came to hold that charge is proved against the applicant and other accused persons and eventually convicted all three accused persons by passing the sentence of 1 year RI and fine of Rs.500/- each. In appeal, the Appellate Court did not find the charge to be proved against other co-accused persons Dipak and Vijay as a result of which they have been acquitted by the impugned judgment but conviction of the appellant under Section 379 of IPC has been affirmed.

3. I have heard Shri S.K. Sharma, learned counsel for applicant and Shri Pushpraj Singh, learned Public Prosecutor for State and having heard them I am of the view that this revision deserves to be allowed in part.

4. On bare perusal of the evidence of complainant Dr. Narendra Jain (PW1) it is gathered that his Kawasaki motorcycle bearing registration no.MP04-S-8441 was stolen which was stationed in front of his house and he lodged the report. From the 3 Cr.R. No.561/2013 evidence of Ghanshyam Singh (PW3) it is found that he received the message from police control room that a motorcycle has been stolen and therefore motorcycles be checked. During checking when the impugned motorcycle was checked it was found that registration plate was not there and when applicant and acquitted co-accused were interrogated it was found that they have stolen the motorcycle of complainant. There is recovery of the motorcycle from the applicant. Learned Appellate Court after x-raying the evidence of prosecution witnesses came to hold that indeed the applicant has stolen the motorcycle of the complainant. The finding so arrived at by learned Appellate Court is a pure finding of fact and cannot be interfered in this revision. Thus, the conviction of applicant under Section 379 of IPC is hereby affirmed.

5. It has been then contended by learned counsel for applicant that some leniency may be adopted in passing the jail sentence. It has also been put-forth by him that

applicant is in jail custody since 28.02.2013 and thus he has served out more than 2 months out of total jail sentence of one year. Hence, prayed that applicant be sentenced for the period he had already undergone.

6. Looking to the facts and circumstances of the case, since stolen motorcycle has already been received by the complainant and the applicant is in custody since 28.02.2013 he is sentenced for the 4 Cr.R. No.561/2013 period he had already undergone however amount of fine Rs.500/- is enhanced to Rs.15,000/-. Let the balance amount of fine Rs.14,500/- be deposited in the Trial Court on or before 17.06.2013. It is made clear that applicant shall be released only after he deposits the balance fine amount. Let entire amount of fine Rs.15,000/- be paid to injured complainant Dr. Narendra Jain, S/o. Shrichand Jain, R/o. 7, Ramanand Nagar, Lalghati, Bhopal, who was examined as PW1 in the Trial Court towards compensation under Section 357 of Cr PC. Further it is made clear that in case the applicant fails to deposit the said amount, he shall further undergo three months RI. The learned Trial Court is hereby directed to do the needful. The record be sent to learned Trial Court posthaste so as to reach that Court much prior to 17.06.2013.

7. Resultantly, this revision application succeeds in part. The impugned judgment of conviction of applicant under Section 379 IPC passed by learned Trial Court, which has been affirmed by learned Appellate Court is hereby affirmed. However, the sentence is modified as indicated hereinabove. (A.K. Shrivastava) Judge
15.05.2013 SS

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