

Pyare Lal Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-28-2012

Appellant : Pyare Lal

Respondent : The State of M.P.

Advocate for Pet/Ap. : Smt. Durgesh Gupta

Judgement :

1 Cr. A. Nos.383/97 & 565/97 HIGH COURT OF MADHYA PRADESH JABALPUR
Criminal Appeal No.383/1997 Ashok Kumar and another Vs. State of Madhya
Pradesh Criminal Appeal No.565/1997 Pyarelal 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 in Cr. A. No.383/1997. Smt.
Durgesh Gupta, counsel for the appellant in Cr. A. No.565/1997. Shri Ajay
Tamrakar, Panel Lawyer the respondent/State.

JUDGMENT

(Delivered on 28th day of September, 2012) This judgment shall govern the
disposal of above mentioned criminal appeals since the impugned judgment in
both the appeal is a common judgment.

2. The appellants have preferred this appeal against 2 Cr. A. Nos.383/97 & 565/97 the judgment dated 31.1.1997 passed by the 2 nd Additional Sessions Judge, Katni in S.T. No.268/88, whereby the appellants were convicted for the offence punishable under Section 394 of IPC and sentenced for five years' R.I. with fine of `500/-. In default of payment of fine, each of them to undergo for six months' R.I. in addition.

3. The prosecutions case, in short is that, on 25.11.1986 at about 7:15 p.m. in the evening, the complainant Jagdish Prasad (PW-3) was sitting in his house situated at village Lukampur (Police Station Vijayraghavgarh, District Jabalpur) alongwith his wife Rambai (PW-8), Gendabai (PW-7) and one Narad Prasad, then two persons entered into in his house having sticks in their hands, they caught the complainant and assaulted him by the sticks. Suddenly, third person also came inside the house and started assaulting the victim. They asked the complainant for the money. The complainant informed them that there must be some amount in the box kept in the room and thereafter, one person stayed with the complainant and two others went inside the room. They opened the box and took a silver Pyal, one wrist watch and cash of `200/-. Thereafter, they went to another room of daughter-in-law of the complainant and took various silver ornaments from the room. They assaulted Gendabai daughter of the complainant, and they took her nose ring. Thereafter, they rushed towards the outside of the house because some 3 Cr. A. Nos.383/97 & 565/97 persons were gathered in front of the complainant's house and there was possibility that they could be caught. One culprit, who stayed outside with the complainant shouted, then remaining culprits ran away from the spot. The complainant Jagdish Prasad was taken to the Police Station, Vijayraghavgarh, where he lodged an FIR Ex.P/1. He had shown his suspicion on one Shivilal that he could send some persons to commit robbery due to enmity. The victims were sent for their medico legal examination. Dr. K.C. Singhai (PW-12) examined Vijay Ramashray, Jagdish, Rambai and Kushalta Bai and gave his reports Exs.P/10 to P/14. He found simple injuries to all such victims.

4. In December, 1987 some culprits were arrested. All the appellants gave their memos under Section 27 of the Evidence Act and one HMT watch was seized from the appellant Ashok Kumar. Similarly, a watch of Reco company was also

seized from the appellant Birendra @ Pappu. The appellant Pyarelal informed that he gave some silver ornaments to one Ramsevak and piece of 1/2 Kg silver was seized from Ramsevak. Both the watches were shown to the victims by Mathura Prasad before the witnesses and they identified the same. Similarly, a test identification parade was 4 Cr. A. Nos.383/97 & 565/97 arranged against the accused persons namely Pyarelal, Ashok Kumar, Birendra @ Pappu and Ramlal. The victims Jagdish Prasad, Narad, Rambai and Chandrashekhar identified the culprits. After due investigation, a charge sheet was filed before the A.C.J.M. Katni, who committed the case to the Sessions Court, Jabalpur and ultimately, it was transferred to the 2nd Additional Sessions Judge, Katni.

5. The appellants abjured their guilt. They did not take any specific plea in defence but they have stated that they were falsely implicated in the matter due to enmity.

6. After considering the prosecutions evidence, the learned 2nd Additional Sessions Judge, Katni convicted the appellants for the offence punishable under Section 394 of IPC and sentenced them as mentioned above.

7. I have heard the learned counsel for the parties at length.

8. The learned counsel for the appellants have submitted that the crime could not be discovered for at least one year and, when the appellants arrested in some other case, the crime committed against the complainant was also lodged against the appellants. They could not be identified in a proper manner. Silver seized from one Ramsevak was not identifiable. Similarly, it is alleged that the seized watches identified by the victims before one Mathura Prasad but Mathura Prasad was not examined before the trial Court to 5 Cr. A. Nos.383/97 & 565/97 prove the identification memos Exs.P/8 & P/9. Similarly, it was accepted by various witnesses that S.H.O. G.K. Tiwari (PW-13) was present at the time of test identification parade. Under such circumstances, the identification parade arranged by the police was not at all an independent document to identify the culprits. The prosecution could not connect the appellants with the present crime and therefore, they cannot be convicted. Hence, it is prayed that the appeals filed by the appellants may be accepted and they may be acquitted from the charges levelled against them.

9. On the other hand, learned Panel Lawyer has submitted that the identification of watches took place before two witnesses namely Phool Singh (PW-8) and Indra Kumar Yadav (PW-11). The victims who identified the watches were also proved the identification memos and therefore, it was proved that the robbed property was seized from the appellants and they were liable for their guilt. The learned trial Court has rightly convicted and sentenced the appellants.

10. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appellants can be convicted for the offence punishable 6 Cr. A. Nos.383/97 & 565/97 under Section 394 of IPC; and whether they can be convicted for any lesser offence of same nature?. If yes, then what would be the sentence imposed upon the appellants.

11. Kushalta Bai (PW-1), Jagdish Prasad (PW-3), Gendabai (PW-7), Rambai (PW-8) etc. were examined to prove the incident took place with them. They proved the incident and their testimony in that respect is acceptable. There are some contradictions between the statements given by these witnesses but looking at the various MLC report proved by Dr. K.C. Singhai (PW-12) for the victims Vijay, Ramashray, Jagdish Prasad, Rambai and Kushalta Bai and FIR Ex.P/1 lodged by the complainant Jagdish Prasad against the unknown person is sufficient evidence to corroborate these witnesses for the entire incident taken place with them. It is proved beyond doubt that the complainant Jagdish Prasad and his family members were robbed by the culprits after assaulting them.

12. Since the FIR was unnamed, therefore, the entire prosecution case depends upon the circumstantial evidence in two parts; firstly, whether the appellants were duly identified by the victims?. and; secondly whether any property was seized from the appellants or a person to whom they transferred the property with the fact that seized property was found to be a 7 Cr. A. Nos.383/97 & 565/97 robbed property. The appellants were shown to the victims by Shri G.P. Gotiya (PW-9) the then Tahsildar, who arranged the identification parade and prepared a memo Ex.P/2. When the appellants were in the jail, it would be proper to arrange the identification parade in the jail. The victims were expected to identify the culprits by

their faces and therefore, their remaining portion of the body should be covered by blanket etc. and some persons of similar faces were to be added in the line of the culprits, so that it would be reasonable for the victims to identify the actual culprits. It would not be proper that the victims could identify any person by fluke. Looking to the arrest memo of various appellants, it appears that some of them were the age groups of 23-24 years and some of them were 32-35 years of age at that time. If the list of persons is perused in the memo Ex.P/2, who were mixed with the culprits then, it would be strange to observe that 2-3 persons were added having their age to be 18 years, whereas one Jawahar Gotiya was also there, who was 58 years of age at that time. Similarly, 3-4 persons were added having their age in between 42-45 years of age. It is nowhere mentioned that those persons were arranged by the police or by the Tahsildar himself. In this connection, Badri Prasad (PW-6) had accepted that the persons, which were mixed in the test identification 8 Cr. A. Nos.383/97 & 565/97 parade were of different identity and different clothing. Similarly, Genda Bai (PW-7) has admitted that at the time of identification, S.H.O. Tiwari and so many police constables were present at the spot.

13. G.P. Gotiya (PW-9) could not give a suitable explanation that the persons in the test identification parade were especially selected or chosen by him. On the contrary, he has accepted that he saw the culprits on the same day and a queue was arranged in the ground and he was sitting in the Varandah of Tahsil Office alongwith the victims. Under such circumstances, where a queue was already arranged by the police, the victims could not know about the culprits to whom, they had to identify and therefore, the identification parade lost its value and it cannot be said beyond doubt that the victims had identified the culprits in the test identification parade.

14. So far as the seizure of various articles is concerned, G.K. Tiwari (PW-13) has proved the seizure Exs.P/5, P/6 & P/7, but the independent witnesses of these memos namely Sonelal (PW-4) and Si b bu Jaiswal (PW-5) have turned hostile. They did not support the prosecution's story. In this connection, if the version given in the FIR Ex.P/1 is perused then, it would be clear that only 9 Cr. A. Nos.383/97 & 565/97 one wrist watch was robbed, whereas the victims had identified two

different watches, one of HMT Company and one of Reco Company. It is nowhere mentioned in the FIR that the watch robbed from the house of the complainant was either a make of HMT or make a Reco Company. No description about the company, who manufactured the watch was mentioned in Ex.P/1 and therefore, prima facie it could not be said that the watches alleged to be seized from the appellants were of the complainant and his family members.

15. So far as the identification memos Ex.P/8 & P/9 are concerned, the watches were identified before one Mathura Prasad but Mathura Prasad was not examined before the trial Court. Looking to the name of father of Mathura Prasad, it appears that he was son of the complainant Jagdish Prasad. It was strange that two witnesses were also examined to confirm the identification memos Exs.P/8 & P/9. Out of these two witnesses, Phool Singh (PW-8) has admitted that the watches were shown to the victims in the Police Station and thereafter, he put his signatures on the documents according to the directions given by the S.H.O. Another witness namely Indra 10 Cr. A. Nos.383/97 & 565/97 Kumar Yadav (PW-11) has accepted that he was called at the Police Station and when he reached to the Police Station, he saw the watches lying on the table of S.H.O. and he also put his signatures on various documents as directed by S.H.O. Tiwari. Under such circumstances, the identification proceedings of the memos Exs.P/8 & P/9 are nothing but the memos to the effect that watches were shown by the police to the victims and therefore, both the identification memos lost their evidentiary value.

16. A memo Ex.P/3 under Section 27 of the Evidence Act was prepared from the appellant Pyarelal that he sold some silver ornaments to one Ramsevak and thereafter, a memo Ex.P/4 was recorded from Ramsevak that he dissolved the silver ornaments and such ornaments were converted into the pieces of silver having weight 500 gms. It is strange that Ramsevak, who could be a witness that the appellant Pyarelal gave him some ornaments was made an accused and thereafter, he was shown absconding, therefore, neither he appeared before the Court as an accused not as a witness. The pieces of silver ornaments could not be identified by the victims because every silver ornaments which is dissolved would become a piece of silver.

17. Under such circumstances, the investigation done by S.H.O. Tiwari appears to be tinted. It is not proved beyond doubt that the victims identified the appellants in a valid test 11 Cr. A. Nos.383/97 & 565/97 identification parade. It is not at all proved that any robbed property was seized from the appellants and therefore, no presumption under Section 114 of the Evidence Act can be drawn against the appellants. There is no reasonable evidence collected by the police, by which the appellants could be implicated in the alleged crime. Under such circumstances, it is apparent that the learned trial Court erred in convicting the appellants for the offence punishable under Section 394 of IPC. Looking at the evidence adduced by the prosecution, the appellants cannot be convicted for the offence punishable under Section 394 of IPC or any inferior offence of same nature like under Sections 392 and 380 of IPC.

18. On the basis of aforesaid discussion, it appears that the appeals filed by the appellants are acceptable and hence, both the appeals are hereby accepted. The conviction as well as the sentence directed by the trial Court against the appellants for the offence punishable under Section 394 of IPC is hereby set aside. They are acquitted from all the charges appended against them.

19. 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.

20. Copy of the judgment be placed in both the appeals 12 Cr. A. Nos.383/97 & 565/97 and one copy shall be sent to the trial Court alongwith its record for information. (N.K. GUPTA) JUDGE 28.09.2012 pnkj

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