

**Sunil Pauch Vs. the State of Madhya Pradesh**

**Sunil Pauch Vs. the State of Madhya Pradesh**

**SooperKanoon Citation :** [sooperkanoon.com/1051321](http://sooperkanoon.com/1051321)

**Court :** Madhya Pradesh

**Decided On :** Apr-03-2013

**Appellant :** Sunil Pauch

**Respondent :** The State of Madhya Pradesh

**Advocate for Pet/Ap. :** Shri. Ashish Tiwari, Shri. S.N.Gupta

**Judgement :**

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :  
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.206/2013 Laxmi  
Narayan Yadav VERSUS The State of Madhya Pradesh Criminal Revision  
No.271/2013 Sunil Pauch VERSUS The State of Madhya Pradesh  
----- Names of counsel for the  
parties in Criminal Revision No.206/2013 Shri Ashish Tiwari, counsel for the  
applicant. Shri Ajay Tamrakar, Panel Lawyer for the State/respondent. Names of  
counsel for the parties in Criminal Revision No.271/2013 Shri S.N.Gupta, counsel  
for the applicants. Shri Ajay Tamrakar, Panel Lawyer for the State/respondent.  
-----

**ORDER**

(Passed on the 3rd day of April, 2013) These two revisions are connected with the  
common order dated 19.1.2013 passed by the learned Additional Sessions Judge  
and Special Judge, Bhopal in criminal appeal No.756/2012, therefore, both the

revisions are decided by this common order. :- 2 :- Criminal Revision No.206 of 2013 Criminal Revision No.271 o

2. The applicants were convicted for the offence punishable under sections 454 and 380 of IPC vide judgment dated 26.7.2012 passed by the learned JMFC, Bhopal (Shri A.P.S.Chauhan) in criminal case No.11151/2011 and sentenced for 3 years rigorous imprisonment with fine of Rs.100/- for each count of offence. In criminal appeal No.756/2012 vide judgment dated 19.1.2013, the learned Additional Sessions Judge and Special Judge No.2, Bhopal, dismissed the appeal 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, the complainant had lodged a written report, Ex.P/1 on 27.11.2011 that she was residing in the school campus of Divisional Residential School, Katara Hills, Bhopal. In the night of 16th and 17th June, 2011, a burglary took place in her house and various golden and silver ornaments were stolen. She lost 2 golden ear tops, one golden ring and one silver Payal. The applicants were arrested because a huge quantity of ornaments were found with them. On 14.11.2011, they confessed about the burglary done in the house of the complainant and therefore, some ornaments were seized from the applicants. Those ornaments were shown to the complainant by Parshad Mahendra Singh :- 3 :- Criminal Revision No.206 of 2013 Criminal Revision No.271 of 2013 Parmar (P.W.5) and she identified all her ornaments and a memo, Ex.P/3 was prepared. After due investigation, a charge-sheet was filed before the trial Court.

3. The applicants abjured their guilt. They did not take any specific plea in the matter. However, they have stated that they were innocent. No defence evidence was adduced.

4. The learned JMFC, Bhopal, after considering the prosecution's evidence, convicted and sentenced the applicants as mentioned above, whereas, the appeal filed by the applicants was dismissed in toto.

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

6. Since it was a case of burglary and theft, therefore, there was no eye witness in the case. The entire case depends upon the circumstantial evidence. If a person is found that he committed a theft and theft was committed by house breaking then, it would be presumed that the person, who was found to be a thief had committed the burglary. In the present case, it was for the prosecution to prove that some ornaments were seized from the applicants and those ornaments were the stolen property. In this connection, the independent witnesses of the seizure were turned hostile. However, the investigation officer Shri C.P.Sharma (P.W.4) has proved the memos under section 27 of the Evidence Act, :- 4 :- Criminal Revision No.206 of 2013 Criminal Revision No.271 of 2013 Ex.P/4 to Ex.P/8 alongwith seizure memos. Looking to the entire property seized from the applicants, related to so many cases, it appears that such type of golden ornaments cannot be supplied by the police on their own and therefore, the evidence given by Shri C.P.Sharma appears to be believable and the ornaments were recovered from the applicants.

7. So far as the identification memo is concerned, Ward Member, Mahendra Singh Parmar (P.W.5) has turned hostile. He did not accept that he arranged the identification of the ornaments as mentioned in the memo, Ex.P/3. Similarly, the complainant Karuna Raghuvanshi (P.W.1) has accepted in her cross-examination that 3 police persons were present at the time of the identification and therefore, the possibility cannot be ruled out that the ornaments were shown to the complainant Karuna Raghuvanshi, prior to arrange the identification proceedings. The complainant Karuna Raghuvanshi did not say that some other ornaments were mixed before showing her ornaments and therefore, the identification proceeding relating to the ornaments loses its evidentiary value. If ornaments are shown to the complainant then, certainly to claim the ornaments it was for her to say that the ornaments were the same which were stolen from her house. Under such circumstances, when the :- 5 :- Criminal Revision No.206 of 2013 Criminal Revision No.271 of 2013 document Ex.P/3 became doubtful, it cannot be said that the recovered ornaments were the same, which were stolen from the house of the complainant Karuna Raghuvanshi and therefore, it cannot be said that the applicants were the persons, who committed theft in the house of the complainant Karuna Raghuvanshi.

8. On the basis of the aforesaid discussion, the applicants could not be convicted for the offence punishable under sections 380 or 454 of IPC. The learned JMFC as well as the learned Additional Sessions Judge has committed an error of law in appreciating the evidence. The judgments passed by both the Courts below suffer from the drawback of perversity and therefore, it is a fit case in which an interference is required in the impugned judgments from the side of this Court, by way of a revision. Consequently, the revisions filed by the applicants Sunil Pauch, Jitendra and Laxminarayan are hereby allowed. The conviction as well as the sentence directed against them for the offence punishable under sections 454 and 380 of IPC are hereby set aside. The applicants are acquitted from the aforesaid charges by given them a benefit of doubt. They would be entitled to get the fine amount back from the trial Court, if they had deposited the same. -:- 6 -:- Criminal Revision No.206 of 2013 Criminal Revision No.271 o

9. The applicants are in jail and therefore, the office is directed to arrange for issuance of release warrants in favour of the applicants with the direction that they be released in the present case and if they are found in custody due to another case then, they may be detained in the jail for those cases.

10. A copy of the order be sent to the trial Court as well as to the appellate Court for information and compliance. (N.K.GUPTA) JUDGE 3 4/2013 Pushpendra

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**