

Dinesh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-10-2013

Appellant : Dinesh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Aseem Dixit

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CRIMINAL REVISION
NO.293/2013 Dinesh Vs. State of M.P.

..... Shri Aseem Dixit,
counsel for the applicant. Shri Ajay Tamrakar, Panel Lawyer for the State.
.....

ORDER

(Delivered on the 10th day of April, 2013) The applicant is convicted for offences punishable under Sections 457, 380 of I.P.C vide judgment dated 8.10.2012 passed by the Judicial Magistrate First Class, Banda, District Sagar in Criminal Case No.791/2012 and sentenced for two year's rigorous imprisonment with fine of Rs.100/- and one year's rigorous imprisonment with fine of Rs.100/-. In Criminal Appeal No.491 of 2012 the learned First Additional Sessions Judge, Sagar vide judgment dated 9.1.2013 dismissed the appeal in toto. Being aggrieved with the aforesaid judgments passed by both the Courts below the applicant has preferred

the present revision.

2. The prosecution's case in short is that, on 21.1.2012 at about 8.00 p.m in the night the complainant Sanjay Jain (PW1) had closed his shop which was running in the Village 2 Criminal Revision No.293 of 2013 Banda, District Sagar in the name of Rajshree Hardware. He kept a cash of Rs.65,000/- and a cheque book of Central Bank of India having one signed blank cheque in that cheque book in the chest kept in the shop. On the next day morning, he was informed by his brother Anil that burglary took place in the shop and the cash as well as the blank cheque was stolen by someone. The complainant lodged an FIR Ex.P/1 against the unknown persons. After 4-5 months, the applicant was arrested and the blank cheque issued by the the complainant and a sum of Rs. 2,000/- were recovered from the applicant. After due investigation a charge sheet was filed before the trial Court.

3. The applicant abjured his guilt. He did not take any specific plea but he has stated that he was innocent. He sold the ornaments of his wife in a sum of Rs.10,000/- and out of that amount the police snatched a sum of Rs.2000/- from him. No defence evidence was adduced.

4. The learned Judicial Magistrate First Class, Banda, District Sagar after considering the evidence adduced by the parties, convicted and sentenced the applicant as mentioned above. The appeal filed by the applicant was dismissed.

5. I have heard learned counsel for the parties.

6. Learned counsel for the applicant submits that the applicant is a youth of 22 years of age, who is in custody since 23.6.2012 and therefore, he remained in the custody for more than 10 months. He was slightly higher than the age o

3. Criminal Revision No.293 of 2013 years and therefore, he could not get the benefit of probation on the basis of the age but, looking to his future where he was the first offender his sentence may be reduced to the period which he has already undergone in the custody.

7. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it is apparent that the applicant does not challenge the conviction directed against him. However, if evidence adduced by the prosecution is considered then an FIR was lodged against the unknown person but a blank cheque which was issued by the complainant has been recovered from the applicant and therefore, it is proved beyond doubt that the applicant was the person who committed theft in the shop of the complainant and a person who enters in the shop where a burglary has been done then he shall be liable for the offence of house breaking. Under such circumstances, the trial Court has rightly convicted the applicant for offence punishable under Section 457, 380 of I.P.C.

8. So far as the sentence is concerned, looking to the age of the applicant and the custody period whereas, he was the first offender and he has his bright future to get the appropriate job and to maintain his family, it is a fit case in which an interference is required from the side of this Court where the applicant remained in the jail for a sufficient time. He remained in the custody for 10 months approximately and 4 Criminal Revision No.293 of 2013 therefore, it would be proper to reduce his jail sentence which he has already undergone in the custody.

9. On the basis of the aforesaid discussion the revision filed by the applicant is hereby partly allowed. The conviction directed for offence punishable under Sections 457, 380 of I.P.C is hereby maintained but sentence is reduced to the period which he has already undergone in the custody. No change in the fine amount.

10. The applicant is in jail and therefore, office is directed to arrange for issuance of a supersession warrant so that the applicant may be released without any delay.

11. Copy of the order be sent to the trial Court as well as the appellate Court for information and compliance. (N. K. Gupta) Judge 10.04.2013 bina