

Deepu Singh @ Deepesh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-04-2012

Appellant : Deepu Singh @ Deepesh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Amit Dubey

Judgement :

1 Criminal Appeal No.481/2012 HIGH COURT OF MADHYA PRADESH
JABALPUR Criminal Appeal No.481/2012 Deepu Singh @ Deepesh and another
Vs. State of Madhya Pradesh

----- Present : Hon'ble
Shri Justice N.K. Gupta.

----- Name of counsel for
the parties: Shri Amit Dubey, counsel for the appellants. Shri G.S. Thakur, Panel
Lawyer the respondent/State.

JUDGMENT

(Delivered on 4th day of September, 2012) The appellants have preferred this appeal against the judgment dated 9.1.2012 passed by the learned Additional Sessions Judge to the First Additional Sessions Judge, Hoshangabad in S.T. No.177/11, whereby the appellants were convicted for the offence punishable under Section 394 of IPC and sentenced for five years' R.I. with fine of `1000/-. In

default of payment of fine, three months' imprisonment was also directed to them in addition.

2. The prosecutions case in short is that on 1.11.2010 at about 8:00 p.m. in the night, the complainant Vinot Kumar was going back to his house at village Beganiya from Nala Mohalla, Itarsi, where he was doing his labour work. In the road towards Beganiya, three unknown culprits stopped him and they assaulted by a rod and they 2 Criminal Appeal No.481/2012 robbed his Nokia Mobile No.1209 with its SIM and also two SIMs, which were kept by the complainant and his cloths were also robbed alongwith a sum of `60/-. The complainant had lodged an FIR Ex.P/1 at Police Station, Pathrota on the same night. After sometime, the appellants and one Aanu Singh were arrested in another case and on interrogation that it was found that the appellants were the culprits of the present case also, therefore, an identification parade was arranged in the jail before the Executive Magistrate, Hoshangabad. The complainant Vinot Kumar and one Biharilal (PW-7) had identified the appellants in the test identification parade. On interrogation, one rod was seized from the appellant Deepu Singh, whereas the cloths of the complainant Vinot Kumar were seized from the appellant Manjan Singh. One mobile was also seized from the accused Aanu Singh. After due investigation, a charge sheet was filed before the J.M.F.C. Hoshangabad, who committed the case to the Sessions Court, Hoshangabad and ultimately, it was transferred to the learned Additional Sessions Judge to the First Additional Sessions Judge, Hoshangabad.

3. 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.

4. After considering the prosecutions evidence, the learned Additional Sessions Judge to the First Additional Sessions Judge, Hoshangabad acquitted the co-accused Aanu Singh but convicted the appellants for the offence punishable under Section 394 of IPC and 3 Criminal Appeal No.481/2012 sentenced them as mentioned above.

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

6. Learned counsel for the appellants has submitted that the appellants were falsely implicated in the matter. Nothing identifiable robbed property was seized from the appellants. They were shown to the victim prior to their test identification parade and therefore, chain of circumstantial evidence is broken. Hence, the appellants may not be convicted for the offence punishable under Section 394 of IPC. In alternate, it is submitted that the appellants are in the custody since February 2011 and therefore, looking to their age etc., it is prayed that their sentence may be reduced to the period, which they have already undergone in the custody.

7. On the other hand, learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct and therefore, it is prayed that no interference is required.

8. After considering the submissions made by learned counsel for the parties, it is to be considered as to whether the appellants can be convicted for the offence punishable under Section 394 of IPC; and whether the sentence imposed by the trial Court can be reduced?.

9. Vinot Kumar (PW-1) had lodged an FIR Ex.P/1 against three unknown persons and therefore, an identification parade took place before the complainant Vinot Kumar and one Biharilal (PW-7). In the FIR Ex.P/1, it is nowhere mentioned that Biharilal was the 4 Criminal Appeal No.481/2012 companion of the complainant or he was the eyewitness in the case. On the bare reading of the evidence given by Biharilal, it appears that he was another victim of robbery on the very same day but in place of writing, a separate FIR for the Biharilal, he was made a witness in the case and an identification parade was arranged with Biharilal also. Under such circumstances, it cannot be said that the alleged robbery committed with Biharilal, was committed by the same persons, who committed the robbery with Vinot Kumar and therefore, identification done by Biharilal has no value. Similarly, if the identification is considered on merits, then as per the identification memo Ex.P/3, the complainant Vinot Kumar identified the appellant Deepu & Manjan Singh in the test identification parade held on 29.4.2011, whereas Biharilal identified these two persons on 29.4.2011 and test identification memo Ex.P/13-A was prepared.

10. It is apparent from the record that the appellant Deepu was arrested on 20.2.2011 and the appellant Manjan Singh was arrested on 26.2.2011 and thereafter, various remands were taken against the appellants but no test identification was arranged for two months. According to the arrest memos, photographs of the appellants were affixed on the arrest memos and therefore, the complainant and the witness could see the photographs of the appellants and identify them in the test identification parade. Similarly, they had an opportunity to see the culprits during their police and judicial remands. A.S.I. Shri N.S. Patel (PW-10) has mentioned that the appellants were taken in cover before the Court 5 Criminal Appeal No.481/2012 for obtaining police/judicial remands but, remand applications Exs.D/1 and D/2 were shown to him in the cross-examination and there is no any statement mentioned on those applications that the appellants were produced in the Court under cover. Under such circumstances, the victim Vinot Kumar and the witness Biharilal had an opportunity to see the culprits before the identification parade. Under these circumstances, the identification parade loses its value and therefore, it cannot be said that the memos Exs.P/3 and P/13-A were prepared without any irregularity. The identification parade have no value in such circumstances and therefore, by memos Exs.P/3 and P/13-A, no evidence is created against the appellants.

11. It is alleged that the appellant Deepu Singh gave a statement under Section 27 of the Evidence Act that he kept a rod in his house. The witnesses namely Manak Singh (PW-3), Sahablal (PW-4) and (PW-5) were turned hostile, who were the witnesses of memo Ex.P/8 and seizure Ex.P/11. A.S. I. Patel (PW-10) has stated about the memo and seizure, but rod was not the robbed property and therefore by seizure of a rod, no evidence is created against the appellant Deepu Singh. Also in memo 27 of the Evidence Act, only that portion can be read in the evidence by which a new fact is known to the investigation officer and therefore, from his memo under Section 27 of the Evidence Act, only one line could be read i.e. 'he kept a rod in his house'. Under such circumstances, by memo and seizure shown by Shri Patel (PW-10) against the appellant Deepu Singh does not create any evidence against him. 6 Criminal Appeal No.481/2012 12. Similarly, it is alleged that the appellant Manjan Singh accepted that he kept some cloths in his house and memo Ex.P/9 was prepared. Thereafter, some cloths were seized from the

appellant Manjan Singh with seizure memo Ex.P/12. The independent witnesses relating to those documents were turned hostile. However, A.S.I. Patel could not show the status of the cloths. The complainant Vinot Kumar has stated in para 1 of his statement that the culprits torn his cloths and some of the cloths were robbed by them but neither the seized cloths were shown to the victim Vinot Kumar by a separate identification proceedings not before the trial Court, therefore, it cannot be said that the cloths seized from the accused Manjan Singh were the same, which were robbed from the complainant. Under such circumstances, seizure of cloths has no value at present. By seizure of some cloths, no evidence is created against the appellant Manjan Singh.

13. Under such circumstances, where an FIR was lodged against the unknown persons and the chain of circumstantial evidence is broken, it is not proved beyond doubt that the appellants were identified on merits or any robbed property was seized from the appellants, therefore, there was no evidence with the prosecution to connect the appellants with the crime. This possibility cannot be ruled out that the appellants were arrested in another crime and therefore, the present crime was also loaded upon them. Under such circumstances, the appellants cannot be convicted for the offence punishable under Section 394 of IPC or any inferior offence of similar 7 Criminal Appeal No.481/2012 nature. The learned First Additional Sessions Judge, Hoshangabad has erred in convicting and sentencing the appellants for the offence punishable under Section 394 of IPC.

14. On the basis of aforesaid discussion, the appeal filed by the appellants appears to be acceptable and hence, it is hereby accepted. The conviction as well as the sentence directed against the appellants for the offence punishable under Section 394 of IPC is hereby set aside. The appellants are acquitted from the aforesaid charge.

15. The Registry is directed to issue a release warrant so that the appellants may be released forthwith.

16. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance, if any. (N.K. GUPTA) JUDGE 04 09.2012 pnkj