

Suraj Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-19-2013

Appellant : Suraj

Respondent : The State of Madhya Pradesh

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR Criminal Appeal No.1486/2009 Suraj and another Vs. State of M.P. As Per : G.S.Solanki, J.

Shri Sharad Verma, Advocate for the appellants. Shri Sudesh Verma, GA for the respondent/State.

JUDGMENT

(19/09/2013) 1. This criminal appeal has been preferred by the appellants u/s 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment dated 7/08/09 passed by Illrd Additional Sessions Judge, Sagar in S.T. No.41/09 whereby they have been convicted u/s 392/34 of IPC and sentenced to RI for 10 years & fine of Rs.5000/- each in default to suffer further RI for 6 months.

2. The prosecution case, in brief, is that on 30/07/2008 at about 7:40 when Smt. Pratibha alongwith Smt. Sushila Gour was taking walk, at the same time, two persons came on motorcycle and out of them one has snatched the neckless of Smt. Pratibha. She went to her house and narrated the story to her husband Rakesh (PW-3) and lodged the FIR (Ex.P-1) at police station Gopalganj. During

investigation both the appellants have been arrested thereafter, Rs. 125/- and 2 Rs. 200/- have been seized at the instance of appellants Suraj and Akhilesh respectively. After the usual investigation, they have been charge sheeted before the Committal Court who in turn committed the case to the Court of Sessions. Additional Sessions Judge framed the charge u/s 392/34 of IPC.

3. Appellants abjured the guilt and pleaded false implication. After appreciation of evidence, appellants have been convicted and sentenced as mentioned hereinabove.

4. Learned counsel for the appellants submits that trial Court committed the illegality in not appreciating the evidence in its proper perspective. It is further submitted that FIR was lodged against the unknown person. It is submitted that Smt. Pratibha as well as Sushila (PW-2) only identified the appellant Akhilesh. Appellant Suraj has not been identified by Smt. Pratibha whereas Sushila was also not confirmed that Suraj was the person who came in motorcycle with appellant Akhilesh.

5. It is further submitted that appellant Suraj has already suffered the jail sentence of about 5 years and 2 months therefore, end of justice would be met if he may be sentenced for the period already undergone.

6. Learned Panel Lawyer for the State has supported the conviction and sentence recorded by the Court below.

7. I have heard learned counsel for the parties and perused the statements of Smt. Pratibha Shrivastava 3 (PW-1) and Smt. Sushila Gaur (PW-2).

8. It is true that FIR was lodged against the unknown person but Smt. Pratibha (PW-1) and Smt. Sushila (PW-2) categorically stated that the person who snatched the neckless from Pratibha was appellant Akhilesh. It makes no difference if test identification parade has not been conducted before the trial of the case. It is established principle of law that test identification parade is only for ascertaining the fact that investigation is going in right direction.

9. Since substantive evidence of Pratibha and Sushila who stated before the trial Court appears to be believable thus, prosecution proved the case beyond reasonable doubt against the appellant Akhilesh. Thus, trial Court has not committed any illegality in recording the conviction and sentence against him.

10. As far as the case of appellant Suraj is concerned, Smt. Pratibha (PW-1) has not stated anything against the appellant Suraj and Smt. Sushila (PW-2) has also not ascertained that Suraj was the person who came on motorcycle alongwith appellant Akhilesh at the time of incident. She only shown the possibility that Suraj may have driven the motorcycle at the time of incident. Under such circumstances, prosecution failed to prove the case against appellant Suraj that he was on the spot. Trial Court committed the illegality in recording the conviction and sentence against him and same is liable to be dismissed.

11. The conviction and sentence recorded by the trial 4 Court u/s 392/34 of IPC against appellant Akhilesh is hereby affirmed. He has suffered the jail sentence of about 5 years and 2 months. The ends of justice would be met, if his jail sentence may be reduced to the period already undergone.

12. Consequently, appeal is partly allowed. The conviction and sentence recorded against appellant Suraj is hereby set aside. Suraj is acquitted to offence under section 392/34 of IPC. He is in jail, he be released forthwith if not required in any other case.

13. The conviction and sentence recorded u/s 392 of IPC against appellant Akhilesh is hereby affirmed. However, his jail sentence is reduced to the period already undergone (5 years & 2 months) alongwith the fine amount awarded by the trial Court. The fine amount has not been deposited. He is directed to deposit the fine amount within one month from today before the concerning Court, in default he may suffer the additional RI for three month. If appellant Akhilesh deposits the fine amount within the stipulated period, he may be released forthwith if not required in any other case.

14. Record of the trial Court be sent back immediately alongwith copy of this order for information and necessary compliance. Certified copy as per rules. (G.S.

Solanki) Judge navin

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