

**Vicky @ Vivek Vs. the State of Madhya Pradesh Judgement Given By:
Hon'ble Shri Justice N.K. Gupta**

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Court : Madhya Pradesh

Decided On : Jan-16-2014

Appellant : Vicky @ Vivek

Respondent : The State of Madhya Pradesh Judgement Given By: Hon'ble Shri Justice N.K. Gupta

Judgement :

HIGH COURT OF JUDICATURE MADHYA PRADESH, JABAPLUR Single Bench:
Hon'ble Mr. Justice N.K.Gupta,J.

CRIMINAL APPEAL NO.1996 OF2013 Vicky @ Vivek. Vs. State of Madhya Pradesh. -----

Shri Pushpendra Dubey, Advocate for the appellant. Shri S.D.Khan, Public
Prosecutor for the respondent/State.

JUDGMENT

(ORAL) (16/1/2014) The appellant was convicted for the offence punishable under Section 392 of IPC vide judgment dated 30.7.2013 passed by the 11th Additional Sessions Judge, Bhopal in ST No.240/2013 and sentenced with five years' RI with fine of Rs.1,000/-.

2. The prosecution case, in short, is that on 5.7.2012 when the complainant Smt. Shashi Panchratan went to New Market Bhopal for some purchasing, then near Kamla Nehru School, Bhopal the appellant came on a bike from the backside and snatched a golden chain of the complainant. The complainant lodged an FIR Ex.P-1 at Police Station T.T. Nagar, Bhopal. After few months the appellant was arrested and robbed chain was recovered from. He was duly identified in the test identification parade. The robbed property was also identified by the complainant in the 2 Cr.A.No.1996/2013 identification proceeding Ex.P-4. After due investigation, a charge sheet was filed before the Chief Judicial Magistrate, Bhopal, who committed the case to the Sessions Court and ultimately it was transferred to the learned 11th Additional Sessions Judge, Bhopal.

3. The appellant-accused abjured his guilt. He did not take any specific plea in the matter, therefore no defence evidence was adduced.

4. After considering the evidence adduced by the prosecution, the learned 11th Additional Sessions Judge, Bhopal convicted and sentenced the appellant as mentioned above.

5. I have heard learned counsel for the parties.

6. Looking to the evidence given by the complainant Smt. Shashi Panchratan (PW-1) and Paridhi Sharma (PW-2) along with timely lodged FIR, it would be apparent that the chain of the victim was snatched by the motorcyclist. The learned counsel for the appellant has submitted that by snatching a chain, no offence under Section 392 of IPC is made out. It is a case of theft. If the definition of robbery is considered under Section 390 of IPC, then if a person causes or attempt to cause any person an instant hurt, then such theft would amount to robbery. In the present case, it would be apparent that by snatching a chain criminal force was used, which could cause a hurt to the victim, and 3 Cr.A.No.1996/2013 therefore a fear instant hurt was caused by the offender, and therefore the offence remains in the category of robbery.

7. So far as the present appellant is concerned with the case, it would be apparent that there was no named FIR against the appellant, but he was duly identified in

the identification proceeding for which a memo Ex.P-3 was recorded. The memo Ex.P-3 is duly proved by the complainant Smt. Shashi Panchratan (PW-1) and Naib Tahsildar Raghuvir Singh (PW-6). The learned counsel for the appellant has submitted that identification was done of the appellant for two different cases and for two different complainants, however it makes no illegality. In the identification memo nothing could be brought in the evidence of the victim Smt. Shashi Panchratan (PW-1) and Naib Tahsildar Raghuvir Singh (PW-6) so that the procedure adopted in the Ex.P-4 may not be accepted. Under such circumstances, the appellant was duly identified and he was the person, who committed the robbery. Also the golden was duly recovered from the appellant by the Investigation Officer and there was no enmity of the appellant with the Investigation Officer, and therefore it cannot be said that seizure may be disbelieved.

8. Similarly, the golden chain was duly identified by the complainant before the reputed citizen, and therefore 4 Cr.A.No.1996/2013 memo Ex.P-4 is acceptable. Consequently, the robbed property was also found with the appellant. Under such circumstances, the chain of circumstantial evidence is complete. The trial Court has rightly convicted the appellant for the offence under Section 392 of IPC.

9. So far as the sentence is concerned, it is true that the appellant was a youth of 21 years of age at the time of incident and he is the first offender. He remained in custody for more than one year. Looking to his conduct and his first offence, his sentence of one year would be sufficient for the crime. Under such circumstances, his jail sentence may be reduced to the period for which he remained in the custody, however some fine may be enhanced.

10. On the basis of aforesaid discussion, the appeal of the present appellant is partly allowed. The conviction of the appellant under Section 392 of IPC is hereby maintained, but his jail sentence is reduced to the period which he has already undergone in the custody by enhancing the fine amount from a sum of Rs.1,000/- to a sum of Rs.4000/-. The appellant is directed to deposit the remaining fine amount before the trial Court or the jail authorities, failing which he shall undergo three months' RI.

11. At present the appellant is in custody, and therefore the office is directed to arrange for issuance of a 5 Cr.A.No.1996/2013 supersession warrant so that the appellant may be released forthwith if he deposits the fine amount.

11. A copy of this judgment be sent to the trial Court for information and compliance. (N.K.Gupta) Judge 16/01/2014 Ansari.

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