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Court : Allahabad

Decided On : Dec-07-1983

Reported in : 1984CriLJ797

Judge : I.P. Singh, J.

Appellant : Dashrath

Respondent : State of U.P.

Judgement :

I.P. Singh, J.

1. This appeal has been filed by Dashrath son of Mool Chand resident of village Sunderpur Gajel, Police Station Rasulabad, district. Kanpur, against the judgment and order of Sri. K.K. Chaubey, IV Additional District and Sessions Judge, Kanpur, passed in Sessions Trial No. 98 of 1976(State v. Dashrath) on 30-9-1978 convicting and sentencing him for an offence punishable under Section 411 IPC to one year's R.I.

2. The facts of the present case fall in a brief compass. According to the F. I. R. lodged by Ramcharan complainant(P. W. 1), four persons had committed robbery in his house in the night between 1/2-10-1975 atabout 11. They were all unknown persons. It is claimed that they were identified during the commission of the robbery by the inmates Ram Charan complainant (P. W. 1) and his daughter Smt.

Ganga Devi (P. W. 4) and the other incoming witnesses, named in the F. I. R. The property, details of which were also given in the F. I. R., was said to have been looted by the miscreants. That property included a wrist Wittch which was said to have been snatched from the wrist of Ganga Devi (P. W. 4). The F. I. R. was lodged the next day i. e., on 2-10-1075 at 12.10 noon at PS Rasulabad, eight miles away from the village of occurrence.

3. It was on 23-11-1975 that the police party consisting of constable Chandradhar Dubey (P. W. 7), constable Chandrapal and constable Maqsood Hasan (P. W. 8). On information being received from an informant, in the presence of public witnesses Soney Lal (PW 2) and Ram Swarup (PW 3) happened to arrest the appellant at Sunderpur Gajan ghat in connection with suspicion of Jus carrying an illicit arm. His personal search yielded the wrist watch (Ext. 1) which he at that time was carrying on his wrist. It is next claimed that soon after this recovery was made both Ram Charan complainant (PW 1) and Ganga Devi (PW 4) arrived at the spot and then recognised the said watch (Ex. 1) to be of Gangadevi (PW 4) which had been looted away by the robbers in the night of the occurrence. Soon after recovery memo (Ex. Ka. 5) was prepared on the spot by constable Chandradhar Dubey (PW 7) and it was signed by the said two constables and attested by the two. public witnesses, In due course the appellant was committed to the Court of Session to face his trial under Section 395/397 and Section 412 I.P.C. It would be unnecessary here to enter into the appreciation of evidence led in this case and would suffice to say that the learned Sessions Judge recorded the following findings :

1. That the robbery as alleged by the prosecution did take place on the date and time put forward.

2. That in that robbery certain property including the wrist watch (Ex. 1) was looted. Thus the said watch was held to be a stolen property.

3. Of course, the two public witnesses of the alleged recovery had turned hostile, They did not support the prosecution on the point of the alleged recovery. However, the evidence of the two constables Chandradhar Dubey (PW 7) and Maqsood Hasan (PW 8) coupled with the supporting evidence of Ram Charan

complainant (PW 1) and Ganga Devi (PW 4) who had recognised the wrist watch on the spot soon after the recovery, was believed and it was held that the stolen property was recovered from the possession of the appellant. In this connection it would not be out of place of refer to the plea taken by the appellant in his statement wherein he though admitted his knowledge about the robbery being committed in the house of Ram Charan on the alleged night yet expressed his ignorance as to whether the said watch (Ex. 1) was stolen in that robbery or not. In other words, he did not admit that the said watch was stolen property. He denied the alleged recovery of the said watch from his possession. Rather, he denied his arrest also on the Ghat as alleged by the prosecution. His contention was that he was arrested from his house but taken to police station Rasulabad where he was falsely implicated in this case. In other words, his contention is that the said watch was planted on him.

4. Considering the entire evidence on record the learned Sessions Judge held the appellant guilty of an offence punishable under Section 411, IPC and convicted him as above.

5. In this appeal I had the advantage of hearing the learned Counsel of both sides who took pains in taking me through the record.

6. The learned Counsel for the appellant in a way did not dispute the robbery in question or that the wrist watch belonged to Smt. Gangadevi (PW 4) or for that matter the said watch might be stolen properly. His contention has been that the prosecution evidence on record docs not prove the alleged recovery of the said watch from the possession of the appellant. This brings us to the appreciation of the evidence led by the prosecution on this point. As is obvious, the constable who arrested the appellant and effected the recovery of the said watch from the possession of the appellant, claims to have done so in the presence of two other constables, namely, Chandrapal and Maqsood Hasan (PW 8) as well as in the presence of two public witnesses, namely Soney Lal (PW 2) and Ram Swarup (PW 3). As already observed above, these two public witnesses turned hostile and did not favour the prosecution. That raises the question as to whether the other three persons who are constables and formed the initial police party should be

believed on this point or not normally no bias is attached to the evidence of police personnel. They are as good citizens as anyone else. From that standard their evidence .should not be discarded merely because they happen to be police constables. But we cannot lose sight of the other glaring circumstance which had shorn their statements of credibility. They had associated with them the so-called independent public witnesses to effect the arrest and recovery. They were even produced as P. Ws. 2 and but they did not support them. That fact and circumstance by itself is sufficient to introduce an element of doubt in the whole affair. For this reason I am not prepared to place any reliance on the alleged recovery of the said watch from the possession of the appellant. If the recovery is disbelieved, the whole case falls to the ground.

7. Before parting with, this appeal I would like to refer lo the ingredients of Section 411, I. P. C. It runs as follows:

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

8. A mere reading of the above section shows that the person concerned should in the first place dishonestly receive or retain the stolen property. This, ingredient envisages that before the stolen properly goes into the hands of the accused appellant it must be shown that the said property as a stolen property had been in possession of somebody else before it reached the hands of the appellant and that, he received it or retained it dishonestly. The next ingredient is that he should receive or retain the said stolen property knowing or having reason to believe the same to be stolen property. It follows that the burden lies on the prosecution to lead evidence and to prove that the accused-appellant had knowledge or at least reason to believe that the said property was stolen. I am doubtful, if the prosecution in the instant case has been able to prove any of the above ingredients.

9. The appeal succeeds and is allowed. The judgment and order of the learned Sessions Judge is set aside. The appellant is acquitted of the charge levelled

against him. He is on bail. He need not surrender to his bail bonds which are cancelled. The sureties are hereby discharged.

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