

Mukesh Vs. State of Madhya Pradesh

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SooperKanoon Citation : sooperkanoon.com/499939

Court : Madhya Pradesh

Decided On : Jan-24-2006

Reported in : 2006(2)MPHT344

Judge : S.C. Vyas, J.

Acts : India Penal Code (IPC), 1860 - Sections 380; Code of Criminal Procedure (CrPC) - Sections 41 and 102; [Evidence Act, 1872](#) - Sections 25, 26 and 27

Appeal No. : Criminal Revision Nos. 825 and 838/2005

Appellant : Mukesh

Respondent : State of Madhya Pradesh

Advocate for Def. : G.S. Chouhan, Govt. Adv.

Advocate for Pet/Ap. : A.K. Saraswat, ;Iqbal Anwar and; Vikash Rathi, Advs.

Judgement :

ORDER

S.C. Vyas, J.

1. This order shall govern disposal of Cri. Revision Nos. 825 of 05; 838 of 05 and 912 of 05, as they arise out of the common impugned judgment dated 12-8-05, passed in Criminal Appeal Nos. 79 of 05, 95 of 05 and 94 of 05 which have been

preferred by the applicant accused against the finding of conviction and sentences holding them guilty for commission of offence under Section 380 of the Penal Code recorded by Judicial Magistrate First Class Sonkatch in Cri. Case No. 744 of 05 on 16-4-2005 and sentenced each of the applicant to undergo R.I for three years and to pay fine of Rs. 500/-. The learned Addl. Sessions Judge has dismissed all the three appeals and maintained the conviction and sentence.

2. Short facts of the prosecution case are that on 16-7-03 complainant Jinendra Jain Pujari of Pushpagiri Temple lodged a complaint to the Police Station Sonkatch at 5.30 p.m. which was registered as Crime No. 515 of 03 that the complainant is a Pujari of the Pushpagiri Temple. On 16-7-03 after performing the Puja at 10 a.m. he locked the door of the temple and when he came back at 4 p.m. in the temple, he saw that the statue of Padmavati Devi worth Rs. 10,000/- was missing. The Police Sonkatch registered the offence against the unknown person/s and investigated the matter.

3. In the meanwhile Police Note Press, Dewas on 31-8-2004 arrested the applicant Mukesh son of Radheshyam under Section 41 read with Section 102 of Cr.PC. During interrogation the applicant Mukesh gave a statement with regard to the theft of an Idol which was recorded under Section 27 of the Evidence Act. On the same day applicant Siddhu was also arrested under the same provisions and was also interrogated and the information given by him was also recorded under Section 27 of the Evidence Act. On the basis of information one Idol was recovered from the house of applicant Mukesh son of Radheshyam. Thereafter these two applicant and the seized Idol were handed over to Police Sonkatch. Police Sonkatch thereafter commenced the further investigation. During investigation no recovery was made. After completing the investigation, charge-sheet was filed before the Addl. Chief Judicial Magistrate, Sonkatch, who after trial found the applicants guilty, convicted and sentenced them as stated herein above. Their appeals have also been dismissed by learned Addl. Sessions Judge and maintained the conviction and sentence.

4. Learned Counsel appearing for applicant Mukesh son of Radheshyam submitted that he does not challenge the finding of conviction passed against the

applicant, but, confined his prayer with regard to quantum of sentence. He submitted that applicant Mukesh suffered the jail sentence of 16 months and therefore, considering this aspect of the matter, his period of jail sentence be reduced to the one already undergone.

5. As regards applicants Mukesh son of Babulal and Siddhu son of Gheesaji, learned Counsel submitted that the statements of the applicants recorded under Section 27 of the Evidence Act with regard to theft of Idol is not admissible in evidence at all and the two Courts below have committed grave error of law relying on the statements given by the applicants under Section 27 of the Act and base the finding of conviction.

6. On the other hand, Shri G.S. Chouhan, G. A. appearing for respondents State, supported the finding of conviction and the sentence recorded by both the Courts below.

7. On perusal of the record, it is apparent that applicant Mukesh son of Radheshyam was apprehended by Police Bank Note Press, Dewas on 31-8-04 and was arrested under Sections 41 and 102 of Cr.PC. He was interrogated at 5.45 p.m. During interrogation his statement was recorded under Section 27 of the Evidence Act. He had given an information with regard to theft of an Idol and the same was recovered from his house. The statement given by him was admitted in evidence by the Trial Court in to to is not admissible wholly. Only the relevant part of the information which really relates to discovery is admissible. This applicant has given a statement that the Idol is hidden in his house and thereafter the same was recovered from his house at 7.10 p.m.

8. The Police Bank Note Press Dewas has also recorded an information Ex. P-3 given by applicant accused Siddhu that the Idol was kept in the house of Mukesh son of Radheshyam. It is apparent from the information given by the applicant Mukesh at 5.45 p.m. That it was already in the knowledge of the Police that the Idol is kept in the house of Mukesh son of Radheshyam. Therefore, the information recorded under Section 27 of the Evidence Act given by applicant Siddhu is not at all admissible in evidence being the information regarding the fact which was already known to the police and therefore this information was not

admissible in evidence. Section 27 of the Evidence Act reads as under:-

Provided that when any fact is discovered as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

9. Bare reading of the aforesaid section shows that for the applicability of Section 27 of the Act two conditions are pre-requisite (i) information must be such as caused discovery of the fact and (ii) the information must relate distinctly to the fact of discovery and so much of such information, whether it amounts to a confession or relates distinctly to the fact thereby discovered, may be proved.

10. When the police was already aware of the fact that the Idol was kept in the house of applicant Mukesh son of Radheshyam on the basis of information given by the applicant, it can hardly be said that the fact came to the knowledge of the police for the first time on the information given by Siddhu and, therefore, the information given by applicant Siddhu is not admissible at all in evidence.

11. It is well settled law that the information given by an accused in custody must be an information leading to discovery of certain fact which was not in the knowledge of the Police previously. In the matter of *Thimma v. State of Mysore* AIR 1971 SC 1871, the Apex Court has held that once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and the Courts have to be watchful against the ingenuity of the Investigating Officer in this respect so that the production afforded by the wholesome provisions of Sections 25 and 26 of the Indian Evidence Act is not whittled down by the mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on the information for proving the appellant's guilt'.

12. Thus it is clear that the police was already aware of the fact that the stolen Idol was kept in the house of accused Mukesh and now new fact was discovered by the information given by applicant Siddhu. Therefore, it is held that the information (Ex. P-3) recorded under Section 27 of the Evidence Act is inadmissible in

evidence. Apart from this statement, there is no incriminating evidence available on record against applicant Siddhu.

13. Likewise the information (Ex. P-13) said to have been given by applicant Mukesh son of Babulal and recorded by Police Sonkatch is also inadmissible in evidence in view of the settled law as has been held by the Apex Court in the matter of Thimma (supra).

14. In view of the aforesaid discussions, the revision preferred by applicant Mukesh son of Babulal and Siddhu son of Gheesaji deserve to be allowed and are hereby allowed. The impugned conviction and sentence passed against them are hereby set aside. Both of them are acquitted of the charge levelled against them.

15. So far as the revision filed by Mukesh son of Radheshyam is concerned, as discussed above, it is clearly established the offence levelled against him as there is no reason to disbelieve the same. Moreso, when, learned Counsel appearing for him also does not challenge the finding of conviction recorded by both the Courts below. The learned Counsel only submits that looking to the tender age of 19 years at the time of his arrest and the fact that he had already suffered 16 months jail sentence, the applicant be sentenced to the period already undergone.

16. In my view also the submissions advanced by learned Counsel appears to be reasonable. The applicant has sufficiently learnt a lesson during this period of 16 months. It would be just and proper to reduce his jail sentence.

17. In the result, the revision of applicant Mukesh son of Radheshyam is partly allowed. The finding of his conviction is maintained but, the jail sentence is reduced to the one already undergone. He be set at liberty forthwith, if not required in other criminal case.