

Surendra Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-06-1988

Reported in : 1989CriLJ1430

Judge : R.C. Lahoti, J.

Appellant : Surendra Singh

Respondent : State of M.P.

Judgement :

R.C. Lahoti, J.

1. The accused/appellant has been held guilty of an offence punishable under Section 394 I. P. C. read with Sections 11 and 13 of M. P. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 by the Special Judge, Morena, and sentenced to undergo four years' rigorous imprisonment.

2. The prosecution case as set out in the first information report (Ex. P/3) lodged by Raghuraj Singh (P. W. 2) is that the accused/ respondent was known to him for little over a month prior to the date of the incident, On 9-8-1983, Raghuraj Singh accompanied by his brother-in-law Rustam Singh (P.. W. 3) was returning from Ruar. At Porsa, the accused Surendra Singh met them and asked them to accompany him to village Matiyapura so as to stay with Ramniwas and Munna, his friends. All the three left Porsa for village Matiyapura. At about 11 a.m. all of a

sudden, accused Surendra Singh took out a pistol from a bag resting on his shoulder and demanded money from Raghuraj Singh. Raghuraj Singh (P. W. 2) raised a cry attracting attention of Rustam Singh (P. W. 3), who was moving a few steps ahead of Raghuraj Singh. Rustamsingh turned back, caught-hold of the accused and fell him down, At this point of time accused Surendra Singh fired the pistol causing shot-wound to Raghuraj Singh little above his right knee. Thereafter, Surendrja Singh fled away towards village Gadhiya Raghuraj Singh and Rustamsingh reached P. S. Porsa where Raghurajsingh lodged the F.I.R.

3. Raghuraj singh was referred for medical legal examination to Dr. Birwal of P. H. C. Porsa. He found two wounds below the right thigh of Raghurajsingh, of which one was the wound of entry and the other was the wound of exit. Dr. Birwal opined that the two wounds were caused by a single short fired from a distance of about 4 ft. from the front of the injured. He did not agree with the suggestion that the injury could have been self-inflicted.

4. On completion of usual investigation; a charge sheet was filed and the accused was tried leading into his conviction, as aforesaid.

5. Before the appeal could be heard on merits, the learned Penal Lawyer for the State pointed out that in view of the order dated 26-6-1985 passed by this Court, the conviction of the accused/appellant could not be allowed to be challenged on merits and it is only the question of quantum of punishment that could be gone into. On 26-6-1985, while hearing on the question of admission, this Court directed that the appeal could not be admitted on merits to examine the legality or otherwise of the conviction, but looking to the age of the appellant and the circumstances of case, the appeal could be admitted on the question of sentence only. The learned Counsel for the appellant has relied on a decision of the apex Court in Rabari Ghela Jadav v. State of Bombay : 1960 CriLJ1156 , to contend that looking to the scheme of the relevant provisions contained in Chapter 29 of the Code of Criminal Procedure, 1973, if the appeal was not summarily dismissed, the hearing could not be confined to the question of sentence only and such an order, if passed, would not deprive the appellant of his right to challenge the legality of the conviction. Their Lordships of the Supreme Court in Rabari Ghela

Jadav observed as under:

While an Appellate Court has power to dismiss an appeal summarily, if it considers that there is no sufficient ground for interfering, it has no power to direct that the appeal shall be heard only on the point of sentence. Such an order is not an order of summary dismissal under Section 422 of the Code. The Appellate Court, after hearing the appeal certainly has the power under Section 423, in finally disposing of the appeal, to reduce the sentence but that does not entitle it to direct that an appeal is admitted only on the question of sentence. Such an order if passed is invalid, and the appellant is entitled to insist that the appeal should be heard on merits.

The provision of the repealed Code of Criminal Procedure, 1898, considered by their Lordships of the Supreme Court in the abovesaid decision are no doubt parallel provisions of the new Code and the law laid down does have a binding force as mandated by Article 141 of the Constitution of India while hearing an appeal under the new Code of Criminal Procedure, 1973. Section 385 of the new Code incorporates the corresponding provisions of Sections 422 and 423(1) of the old Code. The Proviso enacted to Sub-section (2) of Section 385 contemplates an appeal only as to the extent or legality of the sentence which the Court may dispose of even without sending for the record of the trial Court, The newly enacted provision contained in Sub-section (3) of Section 385 contemplates an appeal where the only grounds taken in the appeal from a conviction is the alleged severity of the sentence. Even, in such cases, the newly enacted provision contemplates urging or hearing in support of any other ground with the leave of the court. Wherever the ends of justice so require, the Court would not withhold leave to the appellant in challenging the legality of conviction by urging additional grounds though initially he himself might have chosen to confine his challenge to the severity of the sentence only, The present case is a case where the appellant is entitled to urge such additional grounds not only in view of the dictum of their Lordships of Supreme Court, but also because this Court is satisfied that there would be failure of justice if such leave is not given.

6. The learned Counsel for the appellant contended that on the evidence adduced by the prosecution, an offence under Section 394 I.P.C. is not made out even prima facie. There are a few prominent features of the case which have totally escaped the attention of the trial Court while recording the conviction of the accused/appellant, contends the Counsel. It is submitted that the F.I.R. does not at all record that Raghurajsingh (P. W. 3) had any money, with him and that he was robbed of the money. Rustarasingh (P. W. 3) emphatically stated in his examination-in-chief that Raghurajsingh had one thousand rupees with him which the accused had forcibly taken away. During cross-examination, he was confronted with his Police statement, Ex. D/1, wherein this fact is not mentioned and the witness could not furnish any satisfactory explanation for the omission. What is most surprising is that Raghurajsingh himself did not state a single word throughout his statement as to whether he had any money and the money was lost in the incident, not to talk of having been forcibly taken away by the accused. If the person subjected to the alleged robbery does not himself say that he was robbed, the trial court could not have held that the crime of robbery was made out.

7. A perusal of the judgment of the trial court shows that having recorded a finding that the accused did fire the pistol causing a gun-shot wound below the right thigh of Raghurajsingh, it proceeded to say that such injury was caused by the accused while attempting to commit robbery and hence an offence under Section 394 I.P.C. was made out. However, before doing so, the trial Court did not discuss the evidence on which it based its finding as to the commission of attempt at robbery by the accused. Moreover, when the prosecution came out with a case that Raghurajsingh was robbed of the money, the court could not have held the accused guilty by building up a case that though no robbery took place, yet it was attempted.

8. However, so much of the prosecution case shall have to be believed that accused Surendra Singh did fire a pistol causing a gun-shot wound below the right thigh of Raghurajsingh. On this point, Raghurajsingh is corroborated by Rustamsingh (P. W. 3), Dr. D.R. Birwal (P. W. 1) and the F.I.R. Ex. P. 3, though a few contradictions have been pointed out such as whether Rustamsingh caught-hold of Surendra Singh and the accused fired or whether the accused Surendra

Singh fired first and then Rustamsingh caught-hold of him. The fact remains that there is overwhelming and consistent evidence on the point of firing from a pistol from a close range by accused Surender Singh resulting into an injury to Raghurajsingh. The medical evidence does not show that Raghurajsingh sustained any bone injury and that his any vital organ got injured or that the injury was one which could have resulted in death. The injury was simple. The accused/appellant would, therefore, be guilty of causing a simple hurt by deadly weapon, an offence punishable under Section 324 I.P.C. Hurt is one of ingredients of Section 394 I.P.C. and the particulars of the charge framed against the accused Surendra Singh include the factum of his firing a gun-shot at Raghurajsingh, hence with the aid of Section 222 Cr. P.C. there would be no legal hurdle in holding the accused/appellant guilty under Section 324 I.P.C. while acquitting him of the offence under Section 394 I.P.C. as the latter offence includes the earlier one.

9. The learned Counsel for the appellant raised two other fine points of law. He submitted that the conviction under Sections 11 and 13 of the M. P. Dakaiti Aur Vyapharan Prabhayit Kshetra Adhiniyam, 1981, was illegal. According to him, Section 11 of the Adhiniyam was not applicable as Section 394 I.P.C. itself prescribes a specific punishment. It was also submitted that Section 13 of the Adhiniyam was also not applicable because , not only Section 13, but the Adhiniyam itself had ceased to be applicable to Porsa, the scene of the offence, because, the notification making it applicable was repealed w.e.f. 18-11-1984 and by virtue of the law propounded in Rayale Corporation (P.) Ltd. v. Director of Enforcement, New Delhi AIR 1970 SC 494 : 1970 Cri LJ 588 the conviction could not have been recorded under a temporary penal enactment which ceased to be in force on the date of conviction, though it was in force on the date of the offence. It will be mere academic exercise to enter into force of the contentions. On the evidence the accused appellant has been held entitled to acquittal from an offence under Section 394 I.P.C. to which the said Dakaiti Adhiniyam applied and the Adhiniyam does not apply when the offence found proved is merely under Section 324 I.P.C.

10. The result is that the appeal is partly allowed. The conviction of the accused/appellant under Section 394 read with Sections 11 and 13 of the M. P. Dakaiti Aur

Vyapharan Prabhavit Kshetra Adhiniyam, 1981, is set aside as also the sentence of 4 years' R.I. Instead the accused/ appellant is held guilty of offence punishable under Section 324 I.P.C. The accused was arrested on 13-11-83 and remained on temporary bail from 15-3-84 to 5-4-84. Again he was released on bail on 30-5-1984. Thus, during trial he had remained in custody for about 6 months. The accused/ appellant after conviction also remained in Jail for about 15 days before the execution of sentence imposed was suspended by this Court. Looking to the facts and circumstances of the case it would meet the ends of justice, if the accused/appellant is sentenced to suffer rigorous imprisonment for the period already undergone by him. He is on bail. He need not surrender. His bail bonds are discharged.

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