

Ranchhod Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-06-2007

Reported in : 2008(2)MPHT266

Judge : S.L. Kochar, J.

Appellant : Ranchhod

Respondent : State of M.P.

Judgement :

S.L. Kochar, J.

1. All the aforesaid appeals are arising out of same judgment of conviction and sentence, hence the same are taken up together and disposed of by this common judgment.

2. The appellants have filed these appeals, challenging their conviction under Section 395 read with Section 397 of the IPC, sentenced to undergo RI for seven years with fine of Rs. 5,000/- to each appellant, in default whereof to undergo RI for one year, passed by learned III Addl. Sessions Judge, Ujjain in S.T. No. 18/2004, judgment dated 23-8-2005.

3. According to the prosecution case, on 22-8-2003 in the night at 10 p.m., complainant Ramsingh after taking night meal, was sleeping alongwith his family

members inside the house. Some of his family members were sleeping outside the house. In the night at 1.30 a.m. he over heard the cry of his mother and nephew, at that time there was light of electric bulb. He saw that 8-10 persons having lathi and farsi were assaulting them and asking for ornaments. He gave Rs. 200/- to appellant Ramchandra. The miscreants assaulted him and his family members and also looted silver ornaments and cash amount. He identified deceased appellant Salim on spot. He named Govind, Ramchandra, Salim and Ranchhod in the FIR. The appellants were arrested and from their possession looted property was seized. The property was identified in T.I. parade. During the course of investigation, police held T.I. parade of only accused Vikram who has been acquitted by the Trial Court. The names of the appellants appeared in 161 statement of the witness. After investigation, appellants were charge-sheeted for the above mentioned offences. The appellants denied the charges and pleaded innocence. The learned Trial Court found the appellants guilty, convicted them as mentioned herein above.

4. The learned Counsel for appellants have argued only point that offence under Section 397 of the IPC is not made out against the appellants because there is no specific evidence on record about possession of dangerous weapon or use thereof during the course of incident. They have also submitted that appellants are in jail since last more than four years and for offence under Section 395 of the IPC, there is no minimum jail sentence prescribed. The learned Counsel for appellants prayed for reduction in jail sentence.

5. Having heard the learned Counsel for parties and after perusing the entire record, this Court is of the view that conviction of the appellants under Section 397 of the IPC is not sustainable because there is no specific evidence against individual appellants regarding use of deadly weapons like farsi, sword or country made pistol during the course of incident. Padambai (P.W. 2), Shyamubai (P.W. 4), Sayarabai (P.W. 9) and other eye-witnesses have named deceased appellant Salim having farsi and also assaulted some of the witnesses by farsi. Salim has died during the pendency of appeal and his appeal has already been abated. Against the present appellants, there is no consistent specific evidence about possession of deadly weapon. Basant Singh (P.W. 10), Ratanlal (P.W. 11),

Ramsingh (P.W. 14) and Hecralal (P.W. 17) have stated in Court that appellant Ranchhod was having country made pistol and also threatened them by showing the same, but this statement of these witnesses in Court is not available in their case diary statements and they were confronted with their case diary statements regarding this important and material omissions which amount to contradiction for which these witnesses have not assigned any reasonable and plausible explanation.

6. On going through the statements of all the eye-witnesses and victim of the incident, there is no clear evidence that which appellant was having which kind of deadly weapon at the time of commission of dacoity. Therefore, offence under Section 397 of the IPC is not made out against the appellants. It is well settled legal position that the accused cannot be convicted for offence under Section 397 of the IPC with the aid of Section 34 or 149 of the IPC, only those accused persons can be convicted under Section 397 of the IPC against whom there is specific evidence present about possession of deadly weapon in their hand at the time of the incident and the weapon was visible to the witnesses and victims. See *Phool Kunwar v. Delhi Administration* AIR 1975 SC 905.

7. In this view of the matter, conviction under Section 397 of the IPC is not sustainable against any of the appellants. Therefore, conviction and sentence under this section are hereby set aside. For commission of offence under Section 395 of the IPC this is true that minimum jail sentence is not prescribed, but looking to the nature of the offence, the appellants are convicted under Section 395 of the IPC, sentenced to RI for five years and fine of Rs. 5,000/- (Rupees five thousand) to each appellants, in default of payment of fine they shall suffer additional RI for one year.

8. In the result, these appeals are allowed in part on the terms indicated herein above.

9. Original judgment is retained in Cr. Appeal No. 1132/2005 and a copy whereof be placed in the record of connected Cr. Appeal No. 1246/2005 and 1086/2005 and 1072/2005.

