

Ashok Kumar Vs. the State

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Court : Delhi

Decided On : Aug-19-1994

Reported in : 1994IIIAD(Delhi)1309; 1994(3)Crimes732; 55(1994)DLT597; 1994(30)DRJ555

Judge : Dalveer Bhandari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374 and 397; [Indian Penal Code \(IPC\), 1860](#) - Sections 411

Appeal No. : Criminal Revision Appeal No. 284 of 1979

Appellant : Ashok Kumar

Respondent : The State

Advocate for Pet/Ap. : R.M. John and; R.D. Jolly, Advs

Judgement :

Dalveer Bhandari, J.

(1) The petitioner has filed this revision petition under section 397 of the Cr.P.C. against the judgment dated 20.12.1979 passed by the Additional Sessions Judge dismissing the petitioner's appeal under section 374 of the Cr.P.C. and upholding judgments dated 18.10.1978 and 23.10.1978 respectively of the Court of Mr. P.K. Dham, Metropolitan Magistrate, Delhi by which the petitioner was convicted and

sentenced for the offence under section 411 of the Indian Penal Code . and directed him to undergo R.I. for one year.

(2) Brief facts necessary to dispose of this petition are recapitulated: On 13.7.1974, a theft took place in the House numbering 1135, Chhata Madan Gopal belonging to Basant Lal (Public Witness 4) in which Rs.9,000.00 in cash, one golden necklace, one golden ring and four nose pins were stolen. Basant Lal lodged a report with the police on 17.7.1974. On 20.7.1974 the petitioner was arrested by the police and in pursuance of disclosure statement made by him Rs.1,800.00 were recovered from his house and further at his instance necklace, ring and nose pins were also recovered by the police. On the basis of further cross examination of the petitioner, Vijay Kumar was arrested by the police and in pursuance of the disclosure statement of Vijay Kumar on 21.07.1974 Rs.4,900.00 in cash, were recovered underneath the wheat bag from his shop.

(3) Ashok Kumar, the petitioner pleaded not guilty and further denied in his statement under Section 313 that he pledged a golden necklace, golden ring and golden nose pins with Subhash Chand. According to him Rs. 1,800.00 belong to him and he has also examined Sewak Lal (DW2) and Ganesh(DW3) in support of his defense. He further challenged the judgment of the courts below on various grounds. He submitted that he has been falsely implicated in this case. There has been a delay of 5 days in lodging the F.I.R. and this delay was not satisfactorily explained by the prosecution. As per the F.I.R. a theft in the house of Basant Lal (PW4) took place on 13.7.1974 and the said F.I.R. was lodged on 17th July, 1974. The appellant has not been named in the F.I.R.

(4) It was also submitted on behalf of the petitioner that the stolen property was not recovered before the said F.I.R. was lodged with the police. Attacking the prosecution version Mrs. Rebecca M John, learned counsel for the petitioner submitted that main lacuna in prosecution version is that one Rakesh S/o Radhey Shayam mentioned in the F.I.R. as the person responsible for committing the theft has not even been examined by the prosecution.

(5) She also submitted that the learned Additional Sessions Judge has decided criminal appeals of Ashok Kumar and Vijay Kumar by the impugned judgment. On

the basis of same evidence the learned Additional Sessions Judge accepted the appeal of Vijay Kumar but rejected the appeal of the present petitioner Ashok Kumar. This approach of the learned Additional Sessions Judge in applying different standards for co-accused has led to grave miscarriage of justice.

(6) The learned counsel has drawn my attention to the serious contradictions in the testimony of Mr. Prakash and Subhash Chand (Public Witness 2) in respect of time, place and the person present at the time of occurrence in the Court below. She submitted that the court below has not properly appreciated these material contradictions in the testimony of the prosecution witnesses in the proper perspective. This approach of the trial court raises serious doubts regarding its credibility.

(7) Mrs. John, learned counsel for the petitioner submitted that the prosecution has failed to lead any evidence to show as to how the police had involved the petitioner in this case. The petitioner was neither named in the F.I.R. nor any role was ascribed to him. The only person named in the F.I.R. was Rakesh S/o Radheyshayam who was not even examined by the prosecution. She also submitted that there is no satisfactory evidence to connect the recovery of Rs. 1,800.00 from the petitioner with the stolen amount of Rs.9,000.00. The amount of Rs. 1,800.00 does not represent the entire stolen amount. The fact that Rs.1,800.00 were recovered from the house of the accused does not necessarily lead to the conclusion that Rs. 1,800.00 were part of the total amount of Rs.9,000.00 for which F.I.R. regarding theft was filed. Neither the numbers of notes nor any other identification was mentioned on the stolen notes by which it could be clearly ascertained that the recovered amount of Rs. 1800.00 were part of the stolen amount of Rs. 9,000.00. Even the story of the prosecution regarding the petitioner's pledging one golden necklace, one golden ring and four nose pins for paltry amount of Rs. 150.00 is beyond comprehension. According to the case of the prosecution, even Rs. 4,900.00 were recovered from the possession of Vijay Kumar and on the basis of the testimony of same witnesses Vijay Kumar has been acquitted and the learned A.S.J. was not justified in convicting the petitioner on the basis of same evidence.

(8) Close scrutiny reveals serious lacunas in the entire prosecution version. In this view of the matter, on the basis of the available evidence on record, the petitioner cannot be convicted. The order dated 20.12.1979 passed by learned Additional Sessions Judge is set aside. The petition is allowed and the petitioner is acquitted of the alleged charges. The amount of Rs. 1,800.00 shall be refunded to him. He shall be set on liberty if he is not required in any other case.

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