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Court : Rajasthan

Decided On : Dec-13-1989

Reported in : 1990WLN(UC)26

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 5 of 1987

Appellant : ismail

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

M.B. Sharma, J.

1. The conviction of the accused petitioner Under Section 392, IPC has been upheld by the learned Additional Sessions Judge, 1 No. 2, Alwar under his judgment dated December 10, 1986. The learned Additional Sessions Judge has also maintained the sentence of the accused petitioner awarded to him Under Section 392, IPC, who was sentenced for three years' rigorous imprisonment and a fine of Rs. 500/- or in default of payment of fine to father suffer rigorous imprisonment for 6 months.

2. It is contended by the learned Counsel for the petitioner that the conviction of the petitioner has been affirmed only on one statement of Shakura PW 3. He contends that Shakura, as per his own statement, he did not know the accused-petitioner prior to the occurrence. According to the learned Counsel, identification parade was held after one year and the conviction based upon the same cannot be sustained.

3. The facts of the case are stated in the judgment of the learned Sessions Judge in detail and suffice it to say that as per the case of the prosecution, Shakura had alighted from the bus and coming to his village Alwada. It is alleged that near the Pulia the accused petitioner along with three others met him and all of them were armed with guns. They were stopped and the accused petitioner took away the ornaments of the wife of Shakura under the threat of injuries by gun. A report of the incident was lodged by Kalu who is the uncle of Shakura and a case was registered. The occurrence had taken place on May 29, 1983 and the accused petitioner was arrested on June 1, 1984, i.e. almost after a year of the occurrence. He was sent to the Central Jail and the identification parade was held on June 12, 1984 i.e. after 11 days of his arrest. It was stated by the accused during the identification parade that he was shown to the witnesses. A perusal of the statement of Shakura PW 3 will show that his statement is full of contradictions and he has noted the features of the accused petitioners. That apart he had stated that he had seen him in the flash of bus coming from the opposite direction. A look at the FIR will show that it is not mentioned that there was any source of light much less flash of bus and the accused could not be identified. The conviction of the accused petitioner is rested on the statement of Shakura. There was no recovery of stolen property. In my opinion, looking to the statement of Shakura, the identity of the accused petitioner cannot be said to be established.

4. Consequently, I allowed this revision petition and set aside the judgment of the learned Additional Sessions Judge as well as that of the Magistrate. The accused petitioner is acquitted of the charges levelled against him. He is on bail. He need not surrender to his bail bonds which are here by discharged.