

State of Rajasthan Vs. Durga Ram

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Court : Rajasthan

Decided On : Aug-05-1978

Reported in : 1978WLN(UC)317

Judge : M.C. Jain and; S.C. Agrawal, JJ.

Appeal No. : D.B. Cr. Appeal No. 484 and S.B. Cr. R. No. 333/72

Appellant : State of Rajasthan

Respondent : Durga Ram

Judgement :

M.C. Jain, J.

1. This is an appeal by the State against the judgment dated 13th April, 1972, passed by the learned Sessions Judge, Marta, whereby he acquitted the respondent of the offence under Section 411, IPC, reversing the judgment of conviction of the Munsif Magistrate, Marta, dated 26-8-71.

2. Peer Mohammed has also preferred a revision petition against the judgment of the learned Sessions Judge, Marta. The appeal and the revision, both, are being disposed of by this judgment.

3. The prosecution story, in brief, is that Peerkhan alias Peer Mohammed lodged a report at the police station, Marta, on 1.8.70, in which he stated that a sum of Rs.

3,300/- was lying in a tin box in his shop. This fact was known to Durgaram, Om Prakash and Jagdish as the money was counted in their presence on 30th July 1970. When he searched the tin box the money was missing. On this report a case under Section 457/380, IPC, was registered. During the investigation the respondent got recovered Rs. 2,700/- and the remaining sum of Rs. 600/- was given by the respondent's brother Jagdish to the complainant who produced the same at the Police Station. It is said that the accused gave information to the effect that he had kept the money in a pit by the side of the wall of the kitchen in his house. Accordingly, in pursuance of this information the money was recovered. After completion of the investigation the accused was charged. The accused pleaded not guilty to the charge and claimed to be tried. After recording the evidence the learned Magistrate convicted the accused under Section 411, IPC, and gave him the benefit of probation. The accused went in appeal before the learned Sessions Judge, who found that the identity of the money has not been established by the prosecution and the explanation offered by the accused is satisfactory and on that basis the learned Sessions Judge acquitted the accused and ordered the return of money to him.

4. The State and the complainant, respectively, preferred the appeal and the revision petition, dis-satisfied with the judgment of the learned Sessions Judge.

5. We have heard the learned Public Prosecutor for the State and the learned Counsel for the respondent and perused the record of the case.

6. The learned Public Prosecutor submitted that the identity of money was established that the envelope containing a sum of Rs. 2, 700/- was recovered in pursuance of the information given by the accused. For that there are statements of PW 1 Kalu, PW 2 Peerukhan and PW 8 Ganeshram and also the statement of the investigating officer Kishore Sangh. This aspect of the case is completely ignored by the learned Sessions Judge and even to the witnesses, no cross examination was directed with regard to this envelope containing the money, which bears the address of the complainant and also figures 1000 and 1200-2200 and written in the hand of the complainant. The learned Public Prosecutor also submitted that the learned Sessions Judge was wrong in finding that the accused

has offered a satisfactory explanation for the money recovered from his possession. He further submitted that the defense evidence has not been correctly appreciated by the learned Sessions Judge. According to the learned Public Prosecutor the defense is palpably false. He urged that the prosecution has established beyond all reasonable doubt that the money recovered from the possession of the accused was complainant's money and its identity was established, so the judgment of acquittal may be set aside.

7. The learned Counsel for the respondent, on the other hand, submitted that no question has been put to respondent with regard to envelope Ex. A/1 and there is no reference of this envelope in the report Ex P/1 lodged by the complainant. He also submitted that the learned Sessions judge has rightly believed the version given by the accused that the money belonged to him, as he had borrowed a sum of Rs. 1, 300/ from DW. 1 Harsukh and a sum of Rs. 1, 000/- from DW. 2 Sundaram, for which documentary evidence has also been produced. In the face of this defense and further in view of the fact that the identity of money recovered is not established, the respondent has been rightly acquitted. It was the respondent's money, which has been ordered to be refunded to him.

8. We have given our best consideration to the contentions advanced by both the sides. The most important question in the case is with regard to the identity of the money recovered. This question is to be examined in the light of the facts and circumstances of the case, particularly in the manner the money had been recovered, as well as in the light of this fact that the money was recovered along with the envelope. It is true that there is no mention of this fact that the money was kept in an envelope in the report Ex. P/1 lodged by the complainant. But on that basis it cannot be said that the envelope was foisted at the time of the recovery. The complainant was only required to report the matter when he found a sum of Rs. 3, 300/- missing. Further so far as the recovery of the envelope is concerned no cross-examination has been directed. On this aspect there are the statements of the recovery witnesses, complainant and the investigating officer, so on the basis of the testimony of these four witnesses we find that the money was recovered along with the envelope Ex. A/1. If this fact is held to be proved that Ex A/1 was recovered at the time of the recovery of the money, this goes no long way

to establish the identity of money. Consequently, the very basis on which the judgment of acquittal is founded, does not remain. We may also refer to the explanation offered by the respondent. His explanation is that the money recovered belongs to him and he had borrowed the money from DW 1 Harsukh and D.W 2 Sundaram. D W. 1 Harsukh and D.W 2 Sundaram, both are the relatives of the respondent and it has further come in evidence that the respondent borrowed the money for the marriage of his daughter D.W. 1 Harsukh is related to the accused in this manner that the sister of the accused is married to Harsukh's maternal uncle's son. It may be mentioned that no marriage took place. Then According to Harsukh's statement marriage was to take place on Goga Nawami in Bhadwa If the money was needed for the marriage of the accuser's sister, in our opinion, there was no need to keep that money in a pit and according to the statement of Harsukh the marriage of Durga's sister was solemnized much later and according to Harsukh's statement even the money was not demanded by him even when no manage took place on Gogi Nawami. It may also be stated that the scribe of the documents produced by DW. 1 Harsuih and DW. Sundaram has not been examined. We have perused their statements and their statements do not inspire confidence. As such, the defence put forward by the accused, cannot be believed Consequently, it cannot be said that the explanation offered by the accused is at all satisfactory. In our opinion, the learned Sessions Judge did not examine the case in its correct perspective. As such the judgment of the acquittal cannot be sustained

9. No other point has been pressed before us.

10. In the result the appeal is accepted, the judgment of the learned Sessions Judge, Marta, dated 13th April, 1972, is set aside and the respondent Durga Ram is convicted under Section 411, IPC. He was given the benefit of probation by the learned Munsif-Magistrate, Marta. We also think it just and proper, in the circumstances of the case, in view of the fact that 7 years have passed, to give the benefit of probation to the accused-respondent. Thus, instead of sentencing the accused-respondent we direct that the accused be released on probation. He will enter into a personal bond for a sum of Rs. 3,000/- (three thousand) and one surety in the like amount for a period of one year to appear and receive sentence

whenever he is called upon to do so and shall maintain peace and be of good behaviour during this period.

11. The learned Counsel for the accused-respondent prays for one month's time for submitting the required bonds. The time prayed for is allowed. The respondent shall furnish the required bonds before the Munsif-Magistrate, Marta, within one month from today. It is further ordered that the money recovered from the possession of the accused as well as the money produced by the complainant, be returned to the complainant. I

12. The revision petition is also disposed of accordingly.

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