

Ramesh Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-16-1975

Reported in : 1975WLN(UC)56

Judge : J.P. Jain, J.

Appeal No. : S.B. Criminal Jail Revision No. 428 of 1974

Appellant : Ramesh Chand

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

J.P. Jain, J.

1. Ramesh Chand alias P.C. Jain and Laxmi Narain were tried under Section 373 read with Section 411 Indian P.C. by Additional Munsif and Judicial Magistrate No. 1, Udaipur. He acquitted Laxmi Narain but convicted Ramesh Chand under Section 411 I.P.C. and sentenced him to one year's rigorous imprisonment by his order dated 11.6.74 Ramesh Chand filed an appeal. His conviction was upheld but the sentence was reduced to six months rigorous imprisonment by the learned Sessions Judge, Udaipur, by his order dated 13.8.74. Ramesh Chand has filed a revision from jail against this order.

2. One Kailash Nair, Labour Officer had gone to the premises of M/S. Pesticides India on 23-7-71. He left his bicycle at the entrance and went inside the factory premises. His bicycle was stolen from that place. According to Mr. Nair he purchased his bicycle from Messrs Ajanta Bicycle Stores, Dhan Mundi, Udaipur vide their bill No. 4299 dated 19.1.71 (Ex. P/4), The make of this cycle was 'Atlas.' It was 22' in height. It was black in colour and its frame bore the number 4 M 467762. Mr. Nair submitted the complaint Ex. P/4 to the Sub-Inspector Police Partaphagar, Udaipur on 24-7-71 reporting the loss of his cycle. He gave the description of his bicycle in the report that he has submitted. Ramesh Chandra petitioner was arrested at Ajmer on 27.12.71 in connection with some other theft case of Udaipur. After arrest he was brought to Udaipur. While in the police custody, it is alleged by the prosecution, that he gave information under Section 27 of the Evidence Act to Shri Narendra Mohan Circle Inspector, Surajpole, Udaipur that he had kept a bicycle in his house in Dhan Mundi, near Post Office Udaipur and he could get it recovered. In pursuance of this information a cycle was recovered by Narendra Mohan on 31st December, 1971. The number on the frame of the cycle thus recovered was found to have been marked at some place. The number which could be deciphered from the frame was 46s776 It is alleged by the prosecution that the bicycle was got identified by Mr Nair and some other witnesses in the identification parade. After investigation the police submitted a charge sheet against the petitioner for having stolen the bicycle or for having retained the said bicycle as stolen property. It is note worthy that the cycle which was recovered from the possession of the petitioner, was not brought before the Court. The learned trial Magistrate accepted the evidence and found the petitioner guilty Under Section 411 I.P.C. In the appeal the learned Sessions Judge was conscious that the case was conducted by the prosecution in a very hopeless manner in as much as the prosecution agency failed to produce the stolen property which was alleged to have been recovered from the possession of Ramesh Chand. But the learned Judge fell into similar error in placing reliance on the evidence. He considered the evidence of Shri Kailash Nair, Bhanwar Lal, Sabir Hussain and Narendra Mohan. From their evidence he held that a bicycle was recovered. It bore a certain number and it was got identified to be that of Mr. Nair. The learned Judge admitted in the course of his judgment that there were certain

erasures in the number of the frame. In the absence of the bicycle he was unable to say as to where the erasures were. As stated earlier, according to the first Information report (Ex. P/1) submitted by Mr. Nair, the number of the frame was disclosed to be as 4m. 467762 According to the recovery memo the number found on the frame was 46776. Without seeing the bicycle it is not known what particular figures were erased in the frame of the bicycle recovered from the petitioner. The recovery memo does disclose as to which figures were erased. In any case figure second and third i.e. 4m and the last figure 2 are missing. I am unable to understand how the learned Sessions Judge came to the conclusion that the bicycle which was recovered from the possession of the petitioner was the one which belonged to Mr. Nair, and bore the same number which was disclosed by him in first information report Ex. P/1. This is a very sorry state of affair, which has come to the notice of this court that the prosecution agency has been so callous and indifferent in the discharge of its duties. In this state of affair it is difficult to sustain the conviction recorded by the courts below. It may also be mentioned here that the Means of the identification parade is not substantive evidence. It was the duty of the prosecution to have got the bicycle identified by Mr. Nair in Court in the presence of the accused. In this view of the matter I have no alternative but to allow the revision application and to set aside the order of conviction.

3. In the result the revision is accepted, the conviction of the petitioner is set aside. He is acquitted.