

State of Rajasthan Vs. Kamlashanker

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Court : Rajasthan

Decided On : Apr-04-1991

Reported in : 1991(1)WLN344

Judge : N.K. Jain, J.

Appeal No. : S.B. Cr. Appeal No. 246 of 1985

Appellant : State of Rajasthan

Respondent : Kamlashanker

Judgement :

N.K. Jain, J.

1. This appeal has been filed by the State against the order of the learned Judicial Magistrate, Abu Road whereby he has acquitted the accused of the offence Under Sections 380 and 457 IPC.

2. Brief facts giving rise to this appeal are that one Shyamlal, lodged a report at the Police Station Abu Road with the allegation that he went to Ajmer on 25.4.80 on official duty and returned on 26.4.80 and found that lock of his house was broken but at that time he could not visualise the loss but when his wife and children returned on 30.4.80, thereupon it was found that four gold bangles weighing one tola each, one golden ring weighing 1/2 tola, one golden paddel,

golden tops and currency Under Sections 380, 457 and started investigation. The accused Kamlashanker was arrested on 5.5.80. After completion of usual investigation, police submitted a challan before the learned trial court. The accused pleaded not guilty and claimed trial. The prosecution in support of its case examined 14 witnesses. Statement of the accused Under Section 313 Cr. PC was recorded but no witness was produced in defence, by him. The learned Magistrate after conclusion of the trial acquitted the accused of the offence Under Sections 457 and 380 IPC. Aggrieved by this judgment the State has preferred leave to appeal which was granted on 31.7.85. Hence, this appeal.

3. Mr. K.L Thakur, learned Public Prosecutor appearing for the State has urged that the learned Magistrate has erred in acquitting the accused when the offence Under Section 380 has been established and the stolen gold articles and the cash amount have been recovered from the accused.

4. Mr. K.S. Purbia and Mr. Mahesh Mirdha filed power on behalf of the accused but they have not appeared. Mr. Bhupendra Bhatnagar is appointed as Amicus Curiae to defend the accused and assist the court.

5. I have heard Mr. K.L. Thakur, learned Public Prosecutor, Mr. Bhupendra Bhatnagar Amicus Curiae and perused the record. The accused was arrested vide Ex. P.7 and while he was in custody on his information and at his instance, articles 1 to 11 were recovered vide recovery memo Ex. P.5. Admittedly, all stolen property was recovered, and articles so recovered were identified by Mst. Shanti and were given on Superdginama. But still the trial court has acquitted the accused merely on the ground that one Motbir Bhanwar Singh PW 14 has gone hostile. In view of this the trial court has erred in acquitting the accused for the offence Under Section 380 which is fully proved. Thus he is liable to be convicted Under Section 380 IPC.

6. Mr. Bhatnagar, has submitted that the incident has take place on 25.4.80. The accused was arrested on 5.5.80 and remained in jail for some days and about 11 years have passed, therefore, a lenient view may be taken.

7. I have considered the submissions of Mr. Bhupendra Learned Public Prosecutor has not controverted these facts. Admittedly the accused has remained for some time in jail and the incident is of 1980, so, no useful purpose will be served if the accused is now sent to jail. Under these circumstances, in my opinion, the ends of justice would meet, if the petitioner is awarded sentence already undergone by him.

8. In the result, this appeal is partly allowed and the accused is convicted of the offence Under Section 380 IPC but he is awarded sentence already undergone by him. The accused is on bail, so he need not surrender and his bail bonds are discharged.

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