

The State Vs. Amit and ors.

The State Vs. Amit and ors.

SooperKanoon Citation : sooperkanoon.com/759648

Court : Rajasthan

Decided On : Jul-10-1996

Reported in : 1997CriLJ121; 1996(2)WLN192

Judge : Amaresh Ku. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 380 and 457

Appeal No. : Criminal Appeal No. 353 of 1987

Appellant : The State

Respondent : Amit and ors.

Advocate for Def. : D.K. Parihar, Adv. (for No. 2)

Advocate for Pet/Ap. : B.S. Bhati, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned public prosecutor and the learned counsel for the appellant.
2. The State has filed this appeal against the judgment delivered by the learned Additional Chief Judicial Magistrate, Jodhpuron 23rd February, 1987 acquitting the

respondents Amit and Jai Singh of the offences punishable under Sections 457 and 380 of the Indian Penal Code.

3. The facts of the case may be briefly stated as below:

Mahendra Singh was in the employment of Seth Durga Prasad Sabu who was living in House No. 16/A Shastri Nagar, Jodhpur. According to the prosecution a Honda generator was stolen from the above mentioned house of Seth Durga Prasad Sabu. The first information report about the alleged theft was lodged at the Police Station on 18th June, 1985. In that report it was stated that sometime ago a Honda generator of red colour had been stolen from House No. 16/A, Shastri Nagar, Jodhpur. On the basis of the first information report submitted by Mahendra Singh, the Police registered the case and started investigation. Respondent Amit was arrested by the Police. He was interrogated and during interrogation, on 17th June, 1985 he gave information to the Police about a Honda generator and some other items which according to his information was lying in his own house. Respondent Amit volunteered to get the goods recovered from his house. The information was recorded by the Police on Ex. P-4A. At the instance of respondent Amit, eight articles including one generator were recovered from the house of respondent Amit. After investigation a charge-sheet was submitted against the respondents. The prosecution examined Devi Singh PW -I, Mahendra Singh PW-2, Gopal Krishan PW-3, Ramchandra PW-4, Sangsingh PW-5, Govind Ram PW-6, Parasmal PW-7 and Ratan Singh PW-8, in support of the prosecution accused respondents were examined under Sections 457 and 380 of the Indian Penal Code.

4. The learned trial Court acquitted the accused respondents of both charges on the ground that the offences were not proved beyond the doubt. The learned Additional Chief Judicial Magistrate, held that the first information report was delayed by 15-20 days, Shri Sabu who stated to be the owner of the generator was not produced for examination in any report.

5. The learned Public Prosecutor has submitted that the reasons given by the learned lower Court for acquitting the respondents are not sufficient because the generator which is alleged to have been stolen from the garage of House No. 16/A

Shastri Nagar, Jodhpur was recovered in pursuance of the information given by the respondent Amit. Mahendra Singh PW-2, who had personal knowledge about the theft of the generator has proved his report EX. P-3, and produced the bill Ex. P-2, and identified the generator in the Court. It is also submitted by the learned Public Prosecutor that the respondents have not given any explanation as to how they came into possession of the generator which was recovered from the possession. Therefore, in the absence of any cogent explanation it should be held that the respondents committed the theft of the generator as alleged by Mahendra Singh PW-2.

6. I have carefully considered the arguments as advanced by the learned Public Prosecutor, It appears that on 1st July, 1985, the lower Court directed that the generator be given in the custody of Mahendra Singh PW-2 provided he furnishes a surety bond of Rs. 7,000/- the order of the lower Court does not contain any identification mark of the generator. The superdginama furnished by Mahendra Singh PW-2 describes S. No. of generator as 'G K. 200'. It does not give any other identification mark of the generator. Mahendra Singh PW-2 has stated that he was told about the theft of the generator by the chowkidar, but it was not told to him whether the theft was committed during the day or at night. He has further added that the generator which was stolen is the same which was present in the Court on the date of his examination. He has submitted Ex. P-2 which is alleged to be the bill by which the generator was purchased. But Ex. P-2 is photostat copy of invoice No. 3619 issued on 4th June, 1983, to M/s. Shree Engineers and has not been proved. The original bill and the original invoice have not been produced. There is nothing to show that M/s. Shree Engineers and Seth Durga Prasad Sabu are related to each other in Ex. P-2. The number of the generator as given in Ex. P-2 is GK 200-1047552 200-1047552 whereas in the Superdginama the number of the generator is mentioned as 'GK 200' only. Durga Prasad has not been examined by the prosecution. Ex. P-2 contains the number which is different from the number given in the superdginama and there was no identification of the generator before it was handed over to Mahendra Singh. In these circumstances it is difficult to believe that the generator which was given to Mahendra Singh PW-2 was the the same or which invoice Ex. P-2 was issued. Apart from this the story that the generator had been stolen from the garage is open to the doubts. According to

Mahendra Singh PW-2 a chowkidar used to guard the house and it was the chowkidar who told about the theft of the generator. It means that the chowkidar had personal knowledge whether the generator had been stolen or had not been stolen. The chowkidar has not been produced in evidence. The first information report was lodged after 15-20 days, when the respondents had already been arrested by the Police. In these circumstances it cannot be ruled out that the entire story of the theft is false. In these circumstances the decision arrived by the Additional Chief Judicial Magistrate, Jodhpur cannot be said to be unreasonable and perverse. In my opinion there is no merit in the appeal. This appeal deserves to be dismissed and is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com