

Pooran Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-01-1988

Reported in : 1988WLN(UC)444

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Revision No. 166 of 188

Appellant : Pooran

Respondent : State of Rajasthan

Judgement :

J.R. Chopra, J.

1. Both the parties have requested that this revision petition may be heard and finally disposed of at the admission stage because the record has been received in this case. Consequently, the revision petition was finally heard at the orders stage. It is alleged against the accused-petitioner that he committed theft in the house of complainant Bbura Ram alias Bhanwara Ram in the night intervening between 12th and 13th of November, 1985 and has stolen certain ornaments belonging to complainant Bhura Ram and his brother Laxman's wife Smt. Bhagwani and his sisters i.e. Udi and Mooli and Mst Mohri who is the wife of complainant, the list of which has been given in the Ex.P 2. Accused was arrested on 18-1-1987 and on his information certain ornaments were recovered from the possession of Hari Om

Shroff of Todabhim and certain ornaments have been recovered from his own house on 31-1-1987. The learned trial Magistrate after trial held the accused person guilty of the offence under Sections 457 and 380, IPC and has sentenced him to three years' rigorous imprisonment together with a fine of Rs. 100/- on each count and in default to undergo one month's S.I. On appeal, the conviction of the accused-petitioner was maintained by the learned Additional Sessions Judge, Nagaur, Camp: Deedwana along with the sentences which were imposed against him by the trial court vide his judgment dated 26th May, 1988.

2. Mr. Vyas appearing for the accused-petitioner has submitted that in this case, both the learned lower Courts have committed grave illegality in applying the provisions of Sections 457 and 380, IPC. The occurrence took place on the night intervening between 12th and 13th of November, 1985 where as the recoveries have been made on 31st of January, 1986 and, therefore, by no stretch of imagination, it can be said that the recoveries are recent. The person with whom ornaments were hypothecated has not been examined and, therefore, it has not been brought on record as to on what date these ornaments were pledged with Shri Hari Om Shroff of Todabhim and, therefore, the recovery which has taken place after the expiry of one year and three and a half months cannot be said to be a recent recovery and, therefore, the presumption of theft taken by both the Courts below under Section 114(1) of the Evidence Act cannot be sustained. At best, the accused can be held guilty of the offence under Section 411, IPC and not for the offence under Sections 457 and 380 IPC. He has further submitted that there is an iota of evidence as regards the offence under Section 457 IPC and, therefore, its application to the facts of this case is totally misconceived and unsustainable.

3. Miss S. Sankhla, learned Public Prosecutor appearing for the State has submitted that ornaments have been recovered in their original form and, therefore, it should be presumed that this accused has committed the theft and therefore, accused has rightly been held guilty of the offence under Section 457 and 380, IPC.

4. I have considered the rival submission made at the bar. In the facts and circumstances of this case, when Shri Hari Om Shroff has not been examined and

it has not been brought on record as to on what date, these ornaments were pledged with Shri Hari Om Shroff, it can only be held in the facts and circumstances of this case that the recovery of the stolen ornaments has been made after the expiry of a year and three months from the date of this incident and, therefore, by no stretch of imagination, it can be held that this recovery is recent. At best, a presumption can be taken against the accused that he is a receiver of the stolen property and so on the basis of that the accused should Have been held guilty of the offence under Section 411, IPC and not of the offences under Sections 457 and 380, IPC. Mr. Vyas has further submitted that the accused is a young man of 21 years and be is in custody since 18-1-1987 and, therefore, it will serve the ends of justice if he is sentenced to his period of custody. This submission of Mr. Vyas is not seriously opposed by Miss Sankhla.

5. I have given my most earnest consideration to the rival submissions made the bar and I am convinced that on the basis of the evidence that has been recorded in this case, the accused should have been held guilty of the offence under Section 411, IPC and not under Sections 457 and 380, IPC, because the stolen articles have been recovered almost after 15 months from the date of occurrence and hence both the learned Lower Courts have committed grave illegality in taking the presumption of theft against the accused petitioner. More over, there is no evidence on record regarding the commission of the offence under Section 457, IPC. Keeping in view all the facts and circumstances of this case, I partially accept this revision, set aside the conviction and sentences of the accused petitioner recorded against him under Sections 457 and 380 IPC and acquit him of the aforesaid offences. How ever, he is held guilty of the offence under Section 411, IPC.

6. In the facts and circumstances of this case, it will meet the ends of justice if he is sentenced to the period of his custody and consequently he is sentenced to the period of his custody for the aforesaid offence under Sections 411 IPC. He be released from custody forthwith if he is not wanted in any other case.

7. The revision petition stands disposed of accordingly on merits.

