

Phakira Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-15-1988

Reported in : 1988(1)WLN717

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Cr. Revision Petition No. 364 of 1987

Appellant : Phakira

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

N.C. Sharma, J.

1. Heard. Mr. L.R. Choudhary for the petitioner and Mr. U.C.S. Singhvi, Public Prosecutor in this revision.

2. The petitioner has been convicted under Section 379, IPC by the Judicial Magistrate, Phalodi and sentenced to rigorous imprisonment for one year. The petitioner filed an appeal against his conviction which was dismissed by the Addl. Sessions Judge No. 1, Jodhpur.

3. The prosecution case is that Koshlaram had lodged a report on October 26, 1978 at Police Station, Bhojasar that on August 24, 1978, the petitioner, along with one another person had taken one cow and two calves from his Dhani in the presence of his son Jagdish and two others named Malaram and Mohanram.

4. The learned counsel for the petitioner urged that the recovery of the cow and the calves from the possession of the petitioner has not been established by the prosecution. Ramchandra PW 4 and Umaram PW 9 were the motbir witnesses of the alleged recovery. They have not supported the prosecution. Kaniram PW 8 was the constable who is said to have recovered the cow and the calves. From his statement it does not appear that the cow and the calves were recovered from the possession of the petitioner. He has only stated that brother of the petitioner was found with the cow and the calves in between Ghatiyali village and the Dhani of the petitioner and he brought the cow and calves along with the petitioner's brother. Thus, the recovery of the cow and the calves from the possession of the petitioner is rendered very much doubtful Mohan Ram PW 6 has also not supported the prosecution. The petitioner was entitled to the benefit of doubt.

5. I, therefore, allow this revision, set aside the judgment of the Addl. Sessions Judge No. 1, Jodhpur dated December 3, 1987 affirming the judgment of the Judicial Magistrate, Phalodi dated 4-5-85 and acquit the petitioner for the offence Under Section 379 IPC. He is in jail. He will be released forthwith unless wanted in some other case.