

State of Rajasthan Vs. Kishna

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Court : Rajasthan

Decided On : Mar-20-2001

Reported in : 2002WLC(Raj)UC267; 2002(4)WLN265

Judge : Sunil Kumar Garg, J.

Appeal No. : S.B. Criminal Appeal No. 114-A of 1990

Appellant : State of Rajasthan

Respondent : Kishna

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This State appeal has been filed against the judgment and order dated 1.12.1989 passed by the Munsif and Judicial Magistrate, First Class, Abu Road in Criminal Case No. 18/84. by which the learned Magistrate has acquitted the accused respondent of the charges under Sections 457 and 380 I.P.C. It arises in the following circumstances:

P.W. 1 Mohan Lal lodged a report (Ex.P/1) on 4.12.1983 in the Police Station Abu Road stating that there was a cabin of Pan in the street of Ramji Mandir and in the night of 3.12.1983, P.W.1 Mohan Lal after putting a lock in the cabin went to his

house and early in the morning at about 6.30 a.m. when he came to the Cabin, he found the lock of the cabin opened and also found a 2-in-1 tape-recorder of Sony Brand, missing.

On this report, the police registered a case and chalked out a F.I.R. Ex.P/5 and during investigation, the accused-respondent was arrested by P.W. 5 Laxman Singh on 6.12.1983 and on 7.12.1983, the accused respondent gave an information Ex.P/7 and in consequence to that information, a tape-recorder was recovered in the presence of two Motbirs P.W.3 Nana and P.W.4 Narayan and Fard Baramadgi of the Tape Recorder is Ex.P.5.

After usual investigation, challan was presented against the accused respondent in the Court of Magistrate.

2. The learned Magistrate on 4.6.1987 framed charges for offences under Sections 457 and 380 I.P.C. against the accused respondent who pleaded not guilty and claimed trial.

3. After recording evidence and after taking statement of the accused respondent under Section 313 Cr.P.C., the learned Magistrate vide his judgment and order dated 1.12.1989 acquitted the accused respondent of the charges under Sections 380 and 357 I.P.C. inter alia holding that so far as Motbirs of the Fard Baramadgi Ex.P.5, P.W. 3 Nana and P.W. 4 Narayan are concerned, they have been declared hostile and since independent witnesses do not corroborate to the statement of P.W. 5 Lxman Singh, the learned Magistrate came to the conclusion that the prosecution has failed to prove its case against the accused respondent and he has therefore, acquitted the accused respondents as stated aforesaid.

4. Aggrieved by the judgment and order dated 1.12.1989, the present appeal has been filed by the State.

5. The learned Counsel for the appellant has argued that the reliance can be placed on the statement of P.W. 5, Laxman Singh I.O., who prepared Ex.P.5 and also got the tape-recorder recovered from the possession of the accused-respondent at his instance.

6. On the other hand, the learned Counsel for the respondent has opposed the appeal.

7. In my opinion, the impugned judgment and order dated 1.12.1989 passed by the learned Magistrate does not suffer from any infirmity and illegality. There is no dispute on the point that both the witnesses to the recovery Fard Ex.P5, namely, P.W. 3 Nana and P.W. 4 Naryan Lal have been declared hostile.

8. The most striking feature apart from the fact that both the witnesses to the Fard Recovery have been declared hostile is that P.W. 5 Laxman Singh I.O. and who recovered the tape-recorded at the instance of accused-respondent, has himself stated that the Tape-recorder was got recovered by the accused-respondent near a river. It means the place from where the recovery has been made is in open place and thus, the above statement of P.W.5 Laxman Singh is also not sufficient for convicting the accused respondent for offence under Sections 457 and 380 I.P.C. for the simple reason that the recovery was made from an open place and accessible to all and sundry and in these circumstances, it is difficult to hold positively that the accused- respondent was in possession of the tape-recorder and this being so, the fact of this recovery alone cannot be regarded as conclusive proof that the accused-respondent was in possession of this tape-recorder.

9. For the reasons mentioned above, I have no reason to dissent from the findings arrived at by the learned Magistrate and the present appeal is liable to be dismissed and the judgment and order passed by the learned Magistrate is liable to be confirmed.

10. Accordingly, this State appeal is dismissed after confirming the judgment and order dated 1.12.1989 passed by the learned Munsif and Judicial Magistrate, First Class, Abu Road.