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Dharmoo and anr. Vs. State of J and K

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Court : Jammu and Kashmir

Decided On : Oct-31-2003

Reported in : 2004CriLJ1019,2004(1)JKJ337

Judge : S.K. Gupta, J.

Acts : Ranbir Penal Code (IPC) - Sections 380 and 457

Appeal No. : Criminal Revision No. 62/2003

Appellant : Dharmoo and anr.

Respondent : State of J and K

Advocate for Def. : A.H. Qazi, AAG

Advocate for Pet/Ap. : Babu Ram Sharma, Adv.

Judgement :

S.K. Gupta, J.

1. Through the currency of this revision, the petitioners, Dharmoo and Badri, seek the reversal of judgment dated 5.2.2003 passed by the Judicial Magistrate, Chenani, by virtue of which the petitioners have been convicted for offence under Sections 457/380 RPC and sentenced to simple imprisonment for two and a half years and a payment of fine of Rs. 5,000 each; and further in appeal, conviction

confirmed and sentence modified by the learned Sessions Judge to simple imprisonment for a period of nine months and a fine of Rs. 1,000 vide his order dated 28th July, 2003.

2. The facts relevant for the disposal of this revision put tersely are that both the accused-petitioners were charged to stand their trial for the commission of offence contrary to Sections 457/380 RPC on the allegations that on the night intervening 22/23 January, 1998, the accused forced their entry by breaking open the shop of the complainant, Thakur Dass, at Madha Chenani and removed a box of Biddis, a box of Panama Cigarettes, a bag of plastic shoes and one BPL tape-recorder and some cash, thereby committed burglary. The complainant, Thakur Dass, along with his minor daughter Roma Devi and his sister Sham Dehi, was sleeping in his shop and woke up and saw the accused committing the burglary, but did not gather courage to protest or resist the act of the accused, obviously, out of fear and actuated by instinct of survival and went inside the adjacent kitchen for safety. The Trial Court, after recording the evidence and hearing the parties, found the accused guilty of offence and, consequently, convicted and sentenced in proof of offence under Sections 457/380 RPC. That order was further upheld with modification of the sentence by the Appellate Court.

3. Mr. Babu Ram Sharma, learned counsel appearing for the petitioners, challenged the legality and propriety of the judgment and order of the Appellate Court upholding the conviction awarded by the Trial Court and sentencing the petitioners for nine months and fine of Rs. 1,000 to each of the accused, on variety of grounds. It is stated that the Trial Court has not appreciated the evidence in its proper perspective and recorded the conviction without any basis. The evidence adduced by the prosecution is stated to be interested, contradictory in material particulars and smack of partisanship, therefore, insufficient to record the conviction of the accused without corroboration with an independent testimony. It is further stated by the petitioners' advocate that the evidence provided by the witnesses having seen occurrence with naked eyes is unbelievable, as none of them had resisted on seeing the accused entered by breaking open the shop and removing the merchandise during night of alleged occurrence instead hid themselves in the kitchen, which is contrary to the normal conduct of human

nature. It was lastly contended by Mr. Babu Ram Sharma, petitioners' advocate, that sentence awarded does not commensurate with the magnitude of the offence and is nightly excessive. Whereas Mr. A.H. Qazi, learned AAG appearing for the State, on the other hand, submitted that the statement of the witnesses is consistent, straightforward, cogent and positive to connect the accused with the commission of the offence. The stolen merchandise have also been recovered on the disclosure statement of the accused and identified by the complainant. All the circumstances, when taken together, prove the guilt of the accused beyond any pale of doubt.

I have heard Mr. Babu Ram Sharma, learned counsel appearing for the petitioners, as well as Mr. A.H. Qazi, AAG, at length. Minute examination of the facts and record of the file has been also made meticulously.

4. As regards the first contention raised by Mr. Babu Ram Sharma that the witnesses are interested and their evidence cannot be accepted unless corroborated by independent testimony, it is pertinent to point out that when the occurrence had taken place during night and the accused had entered by breaking open the shop and removed the merchandise articles, it could hardly be expected any independent witnesses to be present there except the inmates of the shop/the house. Ordinarily, the evidence of a truthful eye-witness is sufficient without anything more, to warrant a conviction and cannot for instance, be made to depend for its acceptance on the truthfulness on other items of evidence, such as recovery of stolen goods etc., at the instance of the petitioners by the police. The eye-witnesses examined by the prosecution are the complainant, his minor daughter and sister, who happened to be inside the shop at the time of the incident. It is but natural that they would have seen the occurrence of committing burglary and removing the merchandise from the shop. Mere non-resistance on behalf of the witnesses and escaping from the place of occurrence, and hiding themselves into a kitchen would not render their testimony unbelievable or trustworthy. One cannot forget the normal instinct in a human being that the complainant, Thakur Dass, on seeing two male persons entering into the shop, would not dare to resist the removal of the merchandise perhaps knowing fully well that he is no match either to catch hold of the accused or resist the removal of the

merchandise, being only with one minor daughter and a sister and insufficient to match with their strength. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or other convicted for some animus or some other reasons. In other words, a witness may be called 'interested' only, when he or she derives some benefit from the result of a litigation or in seeing the accused person punished. But the witnesses, who are the natural ones and are the only possible eye witnesses, as in the circumstances of the instant case, cannot be said to be interested. It is not the case of the petitioners that the complainant and the other eye-witnesses are inimical to the accused and are interested in their false implication in the case. In such circumstances, the complainant and the other witnesses would be the last persons to screen the real culprits and falsely implicate the innocent persons. The evidence provided by these witnesses is consistent and corroborates each other in material particulars as to the manner in which the occurrence had taken place. Their evidence further finds corroboration in the recovery of the articles, alleged to have been stolen from the shop by the accused while committing burglary, in pursuance of disclosure statement of the petitioners and identified by the complainant. Nothing inherently improbable or unnatural has been exacted from their testimony to cast any speck of doubt in their testimony to inspire confidence in the Court.

5.The trial Court has found the accused guilty on proper appreciation, estimation and assessment of the evidence of the witnesses, which is further upheld by the Appellate Court and held the accused guilty of the offence under Sections 457/380 RPC. Their evidence cannot be whittled down merely on the ground that it is not supported by the independent witness. Straightforward and trustworthy evidence needs no corroboration for sustaining conviction. Such evidence cannot be discarded on the sole ground of inter-estedness in the prosecution case. The manner in which the recovery of the merchandise goods identified by the complainant fits in with the version given by the eye witnesses, justifies the implicit relevance of the eye witnesses and sufficient to hold the accused guilty and record their conviction for offence under Sections 457/380 RPC by the Trial Court and further upheld by the Appellate Court. I do not find any force in the submission made by the petitioners' advocate that there has not been the proper appreciation of evidence by the Trial Court and that the evidence is not sufficient to base the

conviction of the accused.

Another limb of arguments put across by Mr. Babu Ram Sharma is that one of the accused is 65 years old and that looking to the nature of the offence and the merchandise goods of a petty amount stolen by the accused and, subsequently, recovered by the police at the instance of the accused, besides tape-recorder, does not commensurate with the sentence awarded by the Trial Court. It is not in dispute that a box each of Biddis and Panama cigarettes and a tape-recorder and some cash have been stolen by the accused in burglary, which were subsequently recovered on their disclosure statement. It is settled proposition of law that while awarding the sentence, the nature of offence and not the value of the goods stolen weighs for consideration with the Court. The trial, in this case, is continuing since 1998. It is further stated that the accused-petitioners are the only earning members in the family and if they are sent to jail, the entire family would be put to starvation and the lenient view is prayed to be taken in reducing the sentence though already modified by the Appellate Court.

6. Taking into account the cumulative factors in this case that the accused are facing trial since 1998 and one of the accused is of 65 years and being the only male earning member in the family, the interest of justice would be met by further modifying the sentence of nine months imprisonment, already modified by the Appellate Court, to the imprisonment already undergone and restoring the fine from Rs. 1,000 each to Rs. 5,000 each. In default of payment of the fine, the petitioners shall undergo six months simple imprisonment.

In the facts and circumstances, I do not find any ground to interference with the order of conviction upheld by the Appellant Court except the above modification.

7. With the modification in the quantum of sentence, the appeal is disposed of accordingly.

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