

Hari Singh Vs State.

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Court : Delhi

Decided On : Sep-15-2010

Judge : Mr. Anil Kumar, ; Mr. Suresh Kait. J J.

Appeal No. : Crl.M.B.No.1061/2010 ; 894/2010.

Appellant : Hari Singh.

Respondent : State.

Advocate for Def. : Mr.Lovkesh Sawhney, Adv.

Advocate for Pet/Ap. : Ms.Charu Verma, Adv.

Judgement :

1. Whether reporters of Local papers may be YES allowed to see the judgment?
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in NO the Digest?

ORDER

1. This is an application by the appellant/applicant seeking suspension of his sentence and for enlarging him on bail during the pendency of the present appeal.
2. The appellant has filed the above noted appeal against his conviction and sentence by orders dated 3rd February, 2010 and 18th February, 2010 under

Section 302 of Indian Penal Code and a fine of Rs. 2,000/- and in default to further undergo rigorous imprisonment for a period of three months. He has also been convicted and sentenced under Section 404 IPC for the period of one year and a fine of Rs. 1,000/- and in default to undergo rigorous imprisonment for a period of one month with all the sentences running concurrently.

3. The appellant/applicant has contended that he has already undergone imprisonment of six years three months and six days as on 1st September, 2010 and his family consists of his three elder brothers, one younger brother and an old aged mother as his father has expired and he is not married. According to him, he hails from a poor segment of the society. He also stated that he has never jumped bail and has never been declared a proclaimed offender. According to the appellant, he was not present at the spot and he has been falsely implicated.

4. According to the learned counsel for the applicant no motive can be imputed to the applicant, as from the shop of the deceased of medical equipment, nothing was found missing. From the alleged recovery of the wrist watch which is a common wrist watch of HMT and the recovery memo, not being signed by any independent witness, nothing substantial can be imputed against the applicant.

5. According to the applicant, the wife of the deceased was not called to identify the HMT wrist watch of the deceased which casts a grave shadow of doubt on the authenticity of the alleged recovery. Similarly, the applicant has contended that the alleged recovery of pipe and razor at the instance of the accused is also not trustworthy as no Panchnama had been prepared and no witness was associated while making the alleged recovery which is in violation of Section 100(4) of the Cr. P.C.

6. The applicant/appellant has also disclosed that his finger prints were not found from the place where deceased was lying injured and from where chance print were picked up. From the scene of crime, the chance prints which were lifted were only of Mukesh, another accused. The appellant/applicant is not related to Mukesh, the other co-accused.

7. The learned counsel Ms. Verma has very strongly contended that recoveries of ordinary articles like the HMT watch and an inexpensive ring could not be the basis of conviction of the applicant as there is no other evidence. Reliance has been placed by her on JT 2008(1) SC 191, Mani v. State of Tamil Nadu; AIR 1977 SC 7453; Narsinhbai Haribhai Prajapati v. Chhjatrasinh and Ors. and AIR 1963 SC 1113 Prabhu v. State of UP. The learned counsel has also placed reliance on AIR 1956 SC 54, Sanwat Khan and Anr. v. State of Rajasthan to contend that even if the stolen property is believed to have been recovered from the applicant this per se will not lead to the inference that he is the CrI.M.B.No.1061/2010 in murderer of the deceased. In Sanwat Khan (supra), the Supreme Court had held that if the only evidence against the accused person is the recovery of stolen property and the circumstances may indicate the theft, it will not be safe to draw the inference that the person in possession of stolen property is the murderer, as suspicion cannot take place of proof. The Supreme Court at page-56 of the said judgment has held as under:- " In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof."

8. In the circumstances, it is contended that the applicant has a good prima facie case for his acquittal. There is no direct evidence and even on the basis of circumstantial evidence, merely on the statement of PW-2, former employee, it could not be held that the applicant is involved in the crime.

9. According to learned counsel, PW-16 Sh. Jagat Singh and PW-3 Sh. Sudhir Kumar had opened the shutter of the shop by their own key and surprisingly on finding the deceased injured, instead of taking him to the hospital, they closed the shutter and called the family members, who came later on and took the injured to the hospital. According to the learned counsel, the alleged key from which the shutter was opened by the said witnesses was not recovered and apprehension of the deceased that he might be killed by the in-laws had not been investigated and

inquired by the prosecution.

10. The learned counsel has also asserted that the incident had taken place on 3rd May, 2004 and the alleged `Ustra was allegedly recovered on 3rd June, 2004. No steps were taken for alleged recovery during such a long period. In the circumstances, it is contended that the conviction and sentence of the applicant is based on surmises and conjectures and the findings of the Trial Court are unsustainable and the statement of PW-2 cannot be relied on. The credibility of the statement is also challenged on the ground that according to his statement, other co-accused Mukesh was wearing a half sleeve sweater in the month of summer season, which is highly improbable.

11. Perusal of nominal roll dated 1st September, 2010, it is apparent that the applicant/appellant has already undergone six years three months and five days of imprisonment and his behaviour is satisfactory and there is no other case pending against him. This has not been disputed that the petitioner belongs to a lower strata of society and he is a permanent resident of village Jakholi, District Etawah, UP. The learned counsel for the appellant/applicant has also contended that the appeal is not likely to be heard in the near future as this Court is considering the regular appeals of 2001, whereas the appeal of the applicant is of 2010. The learned APP has disputed the contentions raised by the counsel for the appellant, however, it is not disputed that the appeal is not likely to be taken up for hearing in near future. The learned APP has also contended that the recoveries made from the applicant are sufficient to inculcate him. The reliance has also been placed on the testimony of witness who had seen the applicant coming with other co-accused.

12. In the totality of facts and circumstances and for the foregoing reasons, the application is liable to be allowed, and the sentence of the appellant/applicant is also to be suspended during the pendency of the present appeal. Therefore, the application is allowed and the sentence of the applicant is suspended during the pendency of the present appeal and he is released on bail on his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Judge. The appellant/applicant shall keep concerned

authorities informed about any change of his address and shall appear before the Court either personally or through his counsel whenever the matter shall be taken up for hearing. With these directions and observations the application for suspension of sentence of the applicant/appellant and for releasing him on bail during the pendency of the present appeal is disposed of.

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