

State of Karnataka Vs. Shareef Ahmed. S/O Mohammed Sab,

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Court : Karnataka

Decided On : Nov-03-2010

Judge : K.Sreedhar Rao; B.V.Pinto Jj.

Appeal No. : CRIMINAL APPEAL NO.621 / 2005

Appellant : State of Karnataka

Respondent : Shareef Ahmed. S/O Mohammed Sab,

Advocate for Def. : Sri.Shivaraj B Patil, Adv

Advocate for Pet/Ap. : Sri.H.S.Chandramouli, SPP

Judgement :

1. This appeal is filed by the State challenging the judgment dated 26.11.2004 passed by the Civil Judge (Jr.Dn.) and JMFC, Shikaripura in C.C.No.367/2002 acquitting the respondent of the offence under Section 392 IPC.

2. It is the case of the prosecution that on 13.02.2002 at about 713 p m., when the complainant Yashodha was walking on the road side in front of the house of her brother at Chennakeshwara Layout at Shikaripura, the accused came from back side of the said Yashodha and pulled her gold chain from the neck without the consent of CW-2 by using force and thereby accused was charged of the offence under Section 392 IPC.

3. In order to prove the case, the prosecution has examined in all 9 witnesses and got marked Ex.PI to PI 2 and produced MOS - 1 and 2 being the god chain and dollar with Lakshmi figure. The prosecution commenced in this case with the complaint lodged by one Shivashankarappa who has stated that Vaehodha is his sister and on 13.02.2002 between 7.00 p.m. and 7.15 p.m., some unknown persons came from behind his sister in a bicycle and snatched the chain weighing 10 grams with Lakshmi dollar from the neck of his sister and ran away. The value of the said chain was Rs.4,000/- and hence, he has requested for action.

4. Based on the said complaint, the Shikaripura Police registered a case in Cr.No.44/2002 on 13.03.2002 for an offence under Section 392 IPC. After securing the presence of the accused before the Court, charge for the said offence is framed against the accused. PW-1 Shrivahankarappa is the complainant. He has identified his complaint as well as the gold chain, which was snatched from the neck of his sister by name Yashodha. However, he has turned hostile regarding the identity of the accused. Hence, he has been treated hostile by the prosecution.

PW-2 Smt.Sharadamma has also turned hostile to the case of the prosecution, since she has also not been before the Court.

PW-3 M.H.Ravindra is a signatory to Ex.22, which is a mahazar for the scene of the offence.

PW-4 Suresh is the Secretary of Shikaripura Co-operative Society. He has stated that, he knew the accused and one Soresh and Gumraja who are the witnesses. He has stated that about 3 years back, on the basis of pigmy account the accused requested him loan for which he has refused to give the loan. Thereafter, since he was the Secretary of a Co-operative Society, accused brought a gold chain and requested for giving bail. Since the value of the said gold chain was about Rs.2,560/-. he kept the said chain as a pledge and sanctioned loan to the accused. He has further stated that 15 days thereafter, the appellants came to the Bank along with the accused and accused informed the police that the chain was pledged with him, He has identified the gold chain MO-1 and has not identified MO2 Dollar, Thereafter, he has seen the receipts for having pledged the gold

chain as per Exs.PS and P6 and recognized that the said receipts were issued by him. He has thereafter given the gold chain to the police under mahazar Ex,P7. He has identified the accused before the Court. In the cross-examination, he has stated that Ex.P7 was drawn on 09.03.2002- However, he has stated that he cannot say the length of the gold chain MO-1, PW-5 Nagaraja Koykar is a goklsinith by profession. He has stated that he is the valuer of the gold jewels for the Co-operative Society and also President of the Bank during the relevant period, He has tested Mo-1 and valued at Rs.2,500/ and informed accordingly to PW-4. About 15 days thereafter, he was questioned regarding MO-1 and later the police and accused had come to the Bank and seized MO-1 from the Bank, He has signed Ex.P7 and Ex P7(b). However, he has been treated hostile by the prosecution, in the cross-examination he has stated that he had valued the gold chain on 27.022002 whereas the seizure has taken place on 09.03.2002. PW-6 R.Thammappa is the retired PSI who has stated that on receipt of a complaint, he has registered a set before the Shikaripura Police Station and thereafter he has visited the scene of occurrence and drawn the tnahaaar Ex.P2. Further, he has drawn rough sketch of Ex.PIO. PW-7 Yashodha is the owner of the chain who has stated that on 13.02.2002, some persons came behind her and snatched the gold chain at about 7.15 p.m. She informed the same to her brother PW-1. She has identified the gold chain before the Court. However, she has been treated hostile by the prosecution. In the croes-exaininauon, she has stated that she is not able to say the weight of the gold chain. PW-8 Suresh has stated before the Court that on 19.02.2002 at about 10.30 a.m., the police have seized the gold chain along with Lakshmi dollar and also one yellow receipt from the possession of the accused from his house. The said receipt is marked as Ex.PG. He has identified the same. From the examination of this witness, it is elicited that, Ex.PI 1 is drawn on 09,03.2002. PW-9 Nooruilah Sharief is the Circle Inspector of Police who has conducted the investigation in this case and arrested the accused, recovered the receipt and chain along with dollar from him and after completion of investigation, filed the charge sheet before the Court. It is from the evidence of these witnesses that, the learned Magistrate has held that the prosecution has not proved the case beyond reasonable doubt and acquitted the accused by giving benefit of

5. Heard Sri.K.S.Chandramouli, learned SPP for State and Sri Shivaraj Paul, learned counsel for the
6. It is possession of MO-1 chain, after the theft from it possession of PW-7 Yashodha has been proved by the prosecution witness namely, PW-4 Suresh who has stated that the accused had brought MO-1 to ms Cooperative Society and pledged the same. It is also proved that the yellow receipt marked as Exs.P5 and P6 were seized as per the evidence of PW-8 Suresh and the evidence of the Circle Inspector of Police PW-9 JTooruJlah Sharief. So in consequence of seizure of Ex.PS the police could trace the chain from PW-4 and could recover the same. Under the circumstances, it is clear that the accused was in possession of the chain immediately after the theft having taken place from the possession of Yashodha PW-7. Therefore, it is held that the accused has committed the offence of snatching the gold chain from the possession of PW-7 Yashodha on 13,02.2002 at about 7,15 p.m.
7. So farad the nature of offence is concerned, Section 392 requires that the person from whom the theft is caused shall be put to fear of life or should be threatened or should sustain external injuries. In this case, prosecution has not stated anywhere that PW-7 has sustained any injuries nor any evidence is produced before the Court to show that the accused has caused threat to her. The case of the prosecution is that the accused has come from the behind and snatched the chain. Hence, there is no opportunity' to cause threat to PW-7. Therefore, offence under Section 379 is made out from the materials on record.
8. Hence, the accused is convicted under Section 379 IPC.
9. Heard regarding the sentence.
10. The learned counsel for the accused submits that, the accused is a widower and lias two small children in. the house. He is the only bread winner and therefore lenient view can be taken, In view of the fact that the chain has been recovered and the accused is the sole bread winner of the family, Six months of R.I. for the offence under Section 379 IPC would meet the ends of justice. Therefore, the following order: 10 Cri. A 621/2005

ORDER

- i) The appeal filed by the State is allowed.
- ii) The order of acquittal passed by the trial Court is set aside and accused is convicted for offence under Section 379 IPC and sentenced to undergo R.I. for a period of Six months and to pay a fine of Rs. 1,000/- in default to suffer further S.I. for a period of 3 months,
- iii) The accused is entitled to benefit of set off U/s.428 of Cr.PC.j for the period of under trial detention.
- iv) The trial Court is directed to carry out the sentence.
- v) The accused that is produced before this Court on execution of warrant is committed to custody to serve the balance sentence.

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