

**Pushendra Vs. State of Madhya Pradesh**

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**Court :** Madhya Pradesh Gwalior

**Decided On :** Jun-21-2011

**Judge :** G.D. Saxena, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) 1973](#) - Section 374(2); Indian Penal Code (IPC) - Sections 392, 34, 397, 412; Indian Arms Act - Sections 25(1-b)(A), 27; Evidence Act - Section 114

**Appeal No. :** Criminal Appeal No.601/06

**Appellant :** Pushendra

**Respondent :** State of Madhya Pradesh

**Advocate for Def. :** Shri R.K.Shrivastava, Adv.

**Advocate for Pet/Ap. :** Shri Sunil Soni, Adv.

**Judgement :**

(1) This appeal under Section 374 (2) of the Code of Criminal Procedure 1973 has been preferred by the appellant being aggrieved by the judgment dated 3 rd August 2006 passed in Special Sessions trial No. 22/2006 by the Special Judge (MPDVPK), Shuivpuri (M.P.), convicting him for offence punishable under Sections 392/34 read with Sections 397 and 412 of I.P.C. and under Section 11/13 of the MPDVPK Act and sentencing to suffer ten years' rigorous imprisonment with a fine of Rs. 10,000/- for commission of offence under Section 392/34 read with Section

397 of I.P.C. and in default to suffer three years' additional rigorous imprisonment. No separate sentence has been awarded for commission of offence under Section 412 of I.P.C. and under section 11/13 of the MPDVPK Act. The appellant was further found guilty for commission of offence under Section 25(1-b)(A) and Section 27 of the Indian Arms Act and sentenced to suffer three years' rigorous imprisonment with a fine Rs. 2,000/- and in default to suffer six months' additional rigorous imprisonment. Both the sentences were directed to run concurrently.

(2) The prosecution story in short is that on 15 th November 2005, at about 8 p.m., in night, while the complainant Ramniwas Sharma alongwith staff members of Petrol Pump was sitting at Dawar Petrol Pump, situated in Badarwas, on A.B. road, one boy came driving a Classic Jeep (Mahendra Company) and parked his vehicle just before the cabin of Petrol Pump. It is alleged that soon after him, two miscreants came on a Hero Honda motorcycle. One of them caused opened fire by fire-arm and other two entered inside the cabin of Petrol Pump and put the country-made pistol at the forehead of the complainant. They asked for keys of the chest. When the complainant refused, they threatened to kill him and ultimately succeeded in snatching the keys from the possession of the complainant. Thereafter, they opened the drawer of the chest and looted Rs. 2,84,420=00, one telephone of Cream Color of G tel Company, one mobile model 1100 and after keeping all these looted articles in one beg, fled away from the spot by the same vehicles. The Registration Number of the Motorcycle used in the crime was noted as RJ 20 13M 9623. On report of the complainant at about 8.15 p.m., the FIR was lodged against unknown persons by the Police Station Badarwas, district Shivpuri for commission of offence under Section 392 of I.P.C. read with Sections 11/13 of the MPDVPK Act.

(3) During investigation, the accused Sonu @ Jeetendra s/o Shiv Raj Singh was arrested on 15 th November 2005 (on the fateful night itself) and on his information Rs. Three thousand was recovered from him. On the same day, accused/appellant Pushpendra was arrested and on his information Rs.2,28970=00 and Jeep Classic Mehenda, one motorcycle used in the incident were recovered. From his possession further recovery of one Nokia mobile, 315 bore Katta, one Splendor motorcycle of Hero Honda bearing registration No. RJ 20 13M 9623 and one

mobile of reliance was also made. Another accused Mahesh Meena was arrested and on his information looted property viz., one telephone instrument was recovered. Looted property was also identified by the complainant side. After investigation, the charge-sheet was filed before the trial Magistrate. On committal, the Sessions trial was commenced before the trial Judge. After trial, the Judge found the appellant guilty for commission of offence punishable under Sections 392/34 read with Sections 397 and 412 of I.P.C. and under Section 11/13 of the MPDVPK Act and further under Sections 25 (1-b) (A) and 27 of the Arms act and accordingly punished him as stated aforesaid. Hence, this appeal.

(4) The contention of the learned counsel appearing for the appellant is that the impugned judgment of conviction and sentence is against the principles of law and the evidence as adduced before the trial Court. The prosecution did not examine the independent witness and the trial court on the evidence of the interested witnesses convicted the appellant. The identification of looted property is biased and not free from clog of doubts. The trial court, on the evidence as adduced, acquitted the rest of the accused but convicted the present appellant. Therefore, it is requested that the appeal be kindly allowed and the appellant be acquitted from the charges levelled against him, extending the same benefit of doubt which has been given in the case of other co-accused.

(5) Shri R.K.Shrivastava, Learned Panel Lawyer for the State, on the other hand, contended that the impugned judgment is passed by the trial court after appreciating the evidence on record and hence, no interference is called for. It is submitted that the appeal of the appellant deserves to be dismissed for want of substance.

(6) Heard the learned counsel for the appellant as well as learned Penal lawyer for the respondent/state and also perused the record of the trial Court and the relevant law governing the case.

(7) The most important circumstances to connect the accused-appellant with the commission of alleged offence are the disclosure statement made by him and the recovery of looted articles.

(8) In this case the accused-appellant Pushpendra was arrested on 15 th November 2005 and at the disclosure statement of the accused, one mobile of Nokia, 315 bore Katta, one Splendor motorcycle of Hero Honda bearing registration No. RJ-20 13M 9623, one mobile of reliance, cash of Rs.2,28,970=00 and a vehicle Jeep Classic Mehendra used in the incident were seized by witness Shivraj Singh (PW-1). This witness has put his signatures on the arrest-memo (Ex.P/1) and the recovery memos (Ex.P/2- Ex.P/4)) at portion "A" to A". In para 3 of his statement, he stated that he was accompanied with T.I. Bansal, Daroga and Constable, namely, Virendra and Satish in a jeep at the time following the accused persons.

(9) The Investigating Officer, R.R.Bansal (PW-16) has deposed that on 15/11/05, at around 8-15 p.m. in night, he recorded the F.I.R. (Ex.P/5) of the complainant in respect of commission of robbery by the miscreants. The distance between the place of police station and incident is hardly one k.m. and within fifteen minutes, the report was lodged by the complainant. This witness stated that immediately after the incident he informed his senior police officers and wireless messages were sent for closing a road with a view to arrest the miscreants. At the crossing of Jhansi, accused Sonu alias Jitendra was arrested with the help of police force. On that very day, accused-appellant Pushpendra was arrested and taken into custody. During the course of interrogation, the appellant made a statement which led to the recovery of the looted articles and other incriminating materials. The memorandum (Ex.P/2) was prepared on the basis of such information furnished by the appellant within one hour and consequently the looted articles were recovered from him vide Ex.P/3.

(10) As regards the contention of the learned counsel for the appellant that the sole testimony of the police officer unless it has been corroborated by any independent witness, on the fact of the enquiry at the instance of the accused cannot be accepted and relied upon as the police officer is highly interested person, it would be useful to refer the decision of the Apex Court in the case of Mst. Dalbir Kaur and others v. State of Punjab (AIR 1977 SC 472). In the case of Mst. Dalbir kaur (supra), the Apex court with regard to evidentiary value of evidence furnished by recoveries whether affected has held :-

**“As regards the recoveries of the weapons at the instance of Dalbir Kaur, Dalbir Singh and Ajit Singh, it is true that they have been attested by the police officers and some independent persons as search witnesses. The police officers have been examined to prove the search but the other witnesses have not been examined. That by itself does not introduce any serious infirmity in the evidence furnished by the recoveries which at best is only a corroborative piece of evidence.”**

(11) A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused to wish to implicate him falsely. The term 'interested witness' postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Further section 27 of the Evidence Act does not lay down that the statement made to a police officer should always be in the presence of independent witnesses but the court is expected to seek corroboration in such cases as a matter of caution and not as a matter of rule. In cases where the court is satisfied that the evidence of the police can be independently relied upon, then there is no prohibition in law that the same cannot be accepted without independent corroboration.

(12) As discussed above, apropos the recovery of articles belonging to the complainant from the possession of appellant-accused immediately after the commission of offence, which possession has remained unexplained by the appellant, prima facie attracts the presumption under Illustration (a) of Section 114 of the Evidence Act, which needs no discussion to conclude that the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would, therefore, be that the appellant and no one else had committed the offence. In fact disclosure statement of the accused and huge recoveries from him at his instance by itself is a sufficient circumstance on that very day which clearly goes to show that the accused-appellant has committed the offence of robbery. The trial

court has therefore rightly held that recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the alleged offence against the appellant.

(13) The disclosure statement by the accused-appellant finds further established by the testimony of Shivraj Singh (PW-1) and R.R.Bansal (PW-16), the Investigating Officer. The trial court therefore committed no error in relying upon the circumstances of the disclosure statement of the accused and the consequent recovery of stolen property. Hence, this court finds no substance in the submission of the learned counsel for the defence that as no independent witnesses were associated with the recoveries, a doubt is created in the prosecution version. Otherwise also, there is no reason to disbelieve the testimony of Shivraj Singh (PW-1) and R.R.Bansal (PW-16), the Investigating Officer.

(14) In the result, this court does not find any infirmity or illegality in the findings arrived at by the trial court in convicting and sentencing the appellant for the alleged offence. The appeal has no force and is hereby dismissed.

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