

(2019) 03 MP CK 0156
In the Madhya Pradesh High Court
Case No : Criminal Appeal No.220 Of 2013

Dharmendra Kushwah @ D.K.

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 392

Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 — Section 11, 13

Citation : (2019) 03 MP CK 0156

Hon'ble Judges : Vivek Agarwal, J

Bench : Single Bench

Advocate : B.S. Gour, Vikrant Sharma

Final Decision : Allowed

Judgement

1. This appeal has been filed being aggrieved by the judgment dt.11.2.2013 by Special judge, M.P.D.V.P.K.Act Dabra, Gwalior in Special Sessions Case No.8/2012, whereby appellant Dharmendra has been convicted under Section 392 of IPC with seven years' imprisonment and fine of Rs.500/- and on failure to pay fine, further sentence of one month's R.I. and under Section 11/13 of M.P.D.V.P.K. Imprisonment for seven years and fine of Rs.500/- and on failure to pay fine, further sentence of one month's R.I. It was also directed that all the sentences shall run concurrently.

2. It is submitted that this case was initiated at the instance of complainant Shyam Kishore. The incident took place on 18.6.2011 when the complainant Shyam Kishore was returning with his wife from his in-law's place at Deogarh on his motorcycle Discover No. M.P.-7 M.C.-9494 to his village Chinor when at about 4 p.m. one kilometer before Kheda culvert at Nahar Road they were intercepted by a motor cycle Bajaj Discover No. MP 33/1398 when two boys covering their faces intercepted them and on gun point asked his wife to give up the jewelry which she was wearing and had looted such jewelry. It is submitted that spot

map was prepared by the SHO Suresh Farkale. It is also submitted that appellant Dharmendra was arrested on 8.12.2011 vide Ex.P/11 and his memorandum Ex.P/1 was recorded by the SHO. In the memorandum Ex.P/1, Dharmendra had given statement that some of the jewelry which was looted is in possession of the accused Sonu Yanshkar and he received a sum of Rs. 1300/- and some of the jewelry he had kept at Jhansi at the place of his maternal uncle, Nathu Singh Kushwah.

3. Panchnama (Ex.P/2) was prepared seizing Rs. 1300/-, which were in the shape of 13 notes of Rs.100/- each. Thereafter on 06.02.2012 accused Sonu Yanshkar was arrested and his memorandum was obtained. A sum of Rs. 1000/- was recovered from him and at his instance one 12 bore country made pistol was also recovered. It is submitted that prosecution witness i.e. complainant Shyam Kishore Gautam (P.W.8) and his wife Reena Gautam (P.W.9) have not supported the prosecution case in regard to the TIP (Ex. P/3), which was conducted in relation to appellant Dharmendra. It is submitted that neither appellant Dharmendra has been identified nor any recovery of jewelry has been made from the place of the uncle of Dharmendra. Thus, it is submitted that the appellant has been falsely implicated.

4. It is also submitted that there is no proper identification of appellant Dharmendra and no recovery of jewelry is on his instance and in fact the police had not taken pains to make any recovery from the place of his maternal uncle, where he said that he had kept the jewelry in possession of his uncle.

5. In view of such facts that appellant Dharmendra has not been identified in TIP and only Sonu was identified, no recovery of jewelry is made from or at the instance of Dharmendra, therefore, his conviction only on the basis of memorandum under Section 27 without being supported by any recovery of jewelry, notes of Rs.100/- each not described in the FIR, are not sufficient in itself to confirm finding of guilt.

6. Accordingly, appeal succeeds, conviction of appellant Dharmendra being contrary to evidence is set aside. Appellant is on bail. His bail bonds stand discharged.

Record of the case be sent to the trial court.