

(2020) 07 UK CK 0031

In the Uttarakhand High Court

Case No : Criminal Jail Revision No. 7 Of 2013

Faim@ Fammu @ Mohd. Saleem

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 380, 411
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 114

Citation : (2020) 07 UK CK 0031

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Pooran Singh Rawat, Subhash Tyagi Bhardwaj

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Revisionist is a convict. He was convicted under Section 380 IPC, in Criminal Case No. 619 of 2012, State vs. Faim, by the court of learned Judicial

Magistrate, Ram Nagar, District Nainital (for short "the case") on 21.02.2013 and sentenced to two years rigorous imprisonment and a fine of

Rs.1,000/-. This order is impugned. The order of the trial court was challenged by the revisionist in Criminal Appeal No. 30 of 2013, Faim@ Fammu@

Mohd. Saleem Vs. State, in the court of learned Additional District and Sessions Judge/Special Judge, CBI, Nainital. The appeal was dismissed on

11.06.2013. It is also impugned.

2. Facts necessary for disposal of this revision, briefly stated are that on 12.11.2012, at about 3:00 PM, the revisionist was caught red handed, when he was trying to run away after stealing various articles from the Shivalaya (Lord

Shiva Temple) situated in Village Chilkhiya. The articles include large and small bells, a brass lota (globular water container) and an idol of Goddess Durga. The revisionist was caught by PW3 Sunder Singh, PW4 Gopal

Singh and other villagers. PW2 Sanjay Singh Bhandari was also called. The revisionist was taken to the Police Station alongwith the articles recovered

from him and FIR was lodged. The matter was investigated and charge sheet submitted against the revisionist under Sections 380 and 411 IPC.

3. On 07.12.2012, charge under Sections 380 and 411 IPC was framed against the revisionist, to which, he denied and claimed trial. In all, four

witnesses were examined by the prosecution. The revisionist was examined under Section 313 of the Code of Criminal Procedure, 1973. The

revisionist told that he was urinating near the temple, therefore, he was falsely implicated. By an impugned order dated 21.02.2013 passed in the case,

the revisionist has been convicted and sentenced under Section 380 IPC, as stated hereinbefore. This judgment and order was challenged in the

appeal, which was dismissed.

4. Heard learned counsel for the parties through Video Conferencing and perused the record.

5. Learned Amicus Curiae would submit that in the instance case, recovery has not been made by the Police, instead the villagers brought the

revisionist to the Police Station; the priest of the temple could have been the best person to tell that the articles allegedly recovered from the revisionist

belong to the temple but, he has not been examined; there are contradictions in the statements of PW1 N.S. Ramola and PW4 Gopal Singh because

on the one hand, according to PW1 N.S. Ramola, he is the Investigating Officer in the case, whereas, in his cross examination, PW4 Gopal Singh says

that Investigating Officer is some other person; the witnesses deposed that they did not give any statement to Investigating Officer and, in fact, PW2

Sanjay Singh has told that the site plan was not prepared at his instance; a person named Diwani Ram, who according to prosecution, also

apprehended the revisionist has not been examined; presumption under Section 114 of the Indian Evidence Act, 1872 (â??The Evidence Actâ??)

would have been raised in the instant case had the priest been examined. Since priest has not been examined, the learned trial court erred in law in

raising a presumption under Section 114 of The Evidence Act.

6. On the other hand, learned State counsel would argue that it is the most reliable case, because the arrest has not been made by the Police, instead the local persons arrested the revisionist and brought him to the Police Station. The presence of the revisionist at the spot is admitted; recovery has been made immediately after the theft; the articles belong to the temple; Even if priest is not examined, it does not make any difference because local people identified the articles, who had all the occasions to identify them; small contradictions cannot be examined in this revision.

7. This is a revision. The scope is much limited to the extent of examining the legality, propriety or correctness of the judgment. Appreciation of evidence is generally not made in the revision. Revisional jurisdiction is not parallel to that of appellate jurisdiction. Evidence can be appreciated if it is shown that the material evidence has been ignored, irrelevant material has been considered or there is some perversity in the finding.

8. In this case, four witnesses have been examined. PW1 N.S. Ramola is the Investigating Officer. PW2 Sanjay Singh is the informant, who, in fact, had reached at the spot soon after the arrest of the revisionist by the public. He proved the recovered articles in Court. PW3 Sundar Singh Bhandari and PW4 Gopal Singh are the persons, who first spotted the revisionist and caught him red handed while he was trying to run away from the temple after stealing the articles belonging to the temple.

9. Most of the arguments which have been advanced relate to the factual aspects or appreciation of the evidence. Normally evidence cannot be appreciated in the revision. In the instant case no grounds have been made out which may require this Court to re-appreciate the evidence. One argument is raised with regard to the presumption under Section 114, illustration (a) of the Act, which is as hereunder:

114. Court may presume existence of certain facts.â?The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

â??The court may presume:-

(a) that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen,

unless he can account for his possession.â??

10. In the instant case, according to the prosecution, when the revisionist was trying to run away from the temple after stealing the articles, he was caught. The witnesses have proved that the articles belong to the temple. They were not any ordinary article like utensils, but the articles were bells, platters and an idol of Goddess Durga. The articles were stolen from the temple and soon thereafter the revisionist was found in possession of the stolen articles. In fact, in such a case, a presumption under Section 114 of The Evidence Act can be taken. Illustration (a) to Section 114 of the Evidence Act specifically applies to the instant case. This Court is of the view that the learned court, below did not commit any error in drawing the presumption under Section 114 of the Indian Evidence Act. The impugned orders have been passed in accordance with law. There is no illegality or impropriety or error in the judgments. Therefore, the instant revision deserves to be dismissed.

11. The revision is dismissed.