
(2019) 01 BOM CK 0039

In the Bombay High Court

Case No : Criminal Revision Application No. 11 Of 2014

Imran Khan @ Banti Noorkha Pathan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 380, 457
Evidence Act, 1872 — Section 114, 114(a)

Citation : (2019) 01 BOM CK 0039

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : N.M. Gaidhane, V.P. Gangane

Final Decision : Partly Allowed

Judgement

M. G. GIRATKAR, J.

1. The present revision is against the judgment of conviction by the Judicial Magistrate First Class, Karanja (Ghadge), District Wardha in Regular Criminal Case No. 44/2004 by which the applicant (hereinafter referred to as 'accused') came to be convicted for the offence punishable under Section 380 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/- in default of payment of fine to suffer simple imprisonment for one month. He is also convicted for the offence punishable under Section 457 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/- in default of payment of fine to suffer simple imprisonment for one month. Being aggrieved by the judgment of conviction, the accused filed appeal before the Sessions Judge, Wardha vide Criminal Appeal No. 12/2011. Said appeal came to be dismissed thereby confirming the judgment of trial Court. Hence, the present revision.

2. Heard learned counsel Shri Gaidhane for the accused/ applicant. He has submitted that there is no evidence against the accused/applicant to convict him.

Learned trial Court wrongly invoked the presumption under Section 114 of the Indian Evidence Act. There is no eye witness to the incident. Hence, revision is liable to be allowed.

3. Heard Shri Gangane, learned Additional Public Prosecutor for the State/non-applicant. He has strongly supported the impugned judgments and submitted that the accused was caught/arrested by police immediately after commission of crime and he was found in possession of stolen articles, therefore, presumption under Section 114 of the Indian Evidence Act was rightly invoked by the trial Court. Accused is rightly convicted by the trial Court, therefore, present revision is liable to be dismissed.

4. The applicant was charge-sheeted for committing theft in the night. He committed theft of gold ornaments i.e. mangalsutra of about 30 gms, chaplaktanti of about 30 gms, one golden ring of 4 gms and cash of Rs. 2500/-. Learned counsel for accused has submitted that there is no such report in respect of stolen cash of Rs. 2500/-. There is no explanation as to how he was in possession of Rs. 2500/-. Therefore, presumption is wrongly invoked by the trial Court.

5. Complainant P.W. 3 Chandrashekhar Keshavrao Uchake has stated in his evidence about the theft of golden ornaments and cash of Rs. 2500/-. He lodged report early in the morning on 30-4-2004. Incident of theft took place in the night of 29-4-2004 and 30-4-2004. In his report, complainant has specifically stated that Rs. 2500/- cash and golden ornaments were removed by the thief from his house. Admittedly, the report was lodged against the unknown person.

6. After lodging the report, the accused was arrested immediately in presence of P.W. 6. When accused was arrested, he was found in possession of golden ornaments and cash of Rs. 2500/-. There is no discrepancy in the amount and golden ornaments seized by the police in presence of P.W. 6. P.W. 6 Avinash Raut is an independent witness who has specifically stated that accused was arrested and that time golden ornaments belonging to the complainant and cash of Rs. 2500/- were seized from the accused. Complainant identified those articles. Accused could not give any explanation about the possession of stolen articles.

7. Section 114 of the Indian Evidence Act reads as under.

114. Court may presume existence of certain facts. - 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.

Illustrations

The Court may presume -

(a) That a man who is in 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;

8. As per Section 114 sub-clause (a), that a man who is in 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. Accused has not given any account in respect of articles seized from his possession. Therefore, presumption under Section 114(a) of the Indian Evidence Act is rightly invoked by the trial Court. This presumption is not rebutted by the accused. P.W. 6 is an independent witness. He has specifically stated that golden ornaments and cash of Rs. 2500/- were found in possession of accused. Accused has not given any account of the same. Learned trial Court has rightly invoked the presumption under Section 114 of the Indian Evidence Act and rightly convicted the accused. Appellate Court has also rightly evaluated the evidence on record and dismissed the appeal. Therefore, I do not find any merit in the present revision and it is likely to be dismissed.

9. At this stage, learned counsel Shri Gaidhane for the accused has submitted that accused was in jail for a period of six months and, therefore, judicial discretion may kindly be used by allowing the present revision. The accused was in jail for a considerable period i.e. for six months. As per Section 380 of the Indian Penal Code, punishment is provided to the extent of 7 years and shall also be liable to fine. The punishment for offence punishable under Section 457 of the Indian Penal Code is to the extent of 5 years and shall also be liable to fine. The main offence is under Section 380 of the Indian Penal Code. Learned counsel Shri Gaidhane has submitted that accused has already paid fine amount. Hence, to meet the ends of justice, following order is passed.

ORDER

(a) Revision is partly allowed.

(b) Judgment of conviction in respect of offences punishable under Sections 380 and 457 of the Indian Penal Code is maintained, however, accused is sentenced to the period already undergone in jail. Fine amount already paid before the trial Court.

(c) R & P be sent back to the trial Court.