

(2001) 07 RAJ CK 0094
In the Rajasthan High Court
Case No : Criminal Appeal No. 205 of 2000

Jagdish and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 371
Penal Code, 1860 (IPC) — Section 392, 395

Citation : (2002) 4 WLN 267

Hon'ble Judges : Jagat Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jagat Singh, J.—This appeal has been filed under Sub-section (2) of Section 371 Cr.P.C. against the judgment and order dated 29th April, 2000, delivered by learned Addl. Sessions Judge, No. 1, Bhilwara, by which these four appellants were convicted u/s 395, I.P.C. and each of them has been sentenced to 5 years rigorous imprisonment along with fine of Rs. 1000/-. Aforesaid judgment has been assailed herein by filing this appeal.

2. I have heard at length learned Counsel for these accused appellants Shri B.N. Kalla as also learned Public Prosecutor and have perused the judgment as also evidence available on the file.

3. A perusal of the file reveals that at 10:30 AM on 13.6.1998 in Bhilwara City, at a shop named Rishabh Motors, PW-3 Deepak, aged about 12 years was sitting and his father Chand Mal was out of shop. A little time before one Dinesh came there and handed over Rs. 25,000/- to Deepak to be handed over to his father, which the latter put in a bag, Article-1 and thereafter placed the same in drawer of the table. At about 10:35 AM, some 5-6 persons barged into the shop on the pretext of purchasing oil but instead pushed Deepak and snatched the bag Article-1 containing Rs. 25,000/- and ran away. Upon raising hue and cry, some neighbouring persons chased the accused appellants and caught hold at some

distance Jagdish, Bagga and Nanda and brought them to the shop. In the meantime, Chand Mal also arrived at the shop along with some other persons. He then lodged written F.I.R. Ex.P.5 at 11:30 AM in Kotwali, Bhilwara, along with above 3 accused appellants, caught red-handed.

4. During investigation, Rs. 10,000/- were recovered on the disclosure statement given by Ramesh, from possession of Smt. Mangi. Both of them have been acquitted by the trial court.

5. Mr. Kalla, learned Counsel, took me through the evidence led by the prosecution and submitted that PW-3 Deepak was solitary eye witness of the occurrence, from whom custody the bag Article-1 containing Rs. 25,000/- was snatched and taken away. This witness has been declared hostile and has not identified any accused in the trial court. Similarly, PW-8 Suresh Kumar, who was also a neighbour of the complainant and chased the accused appellants upon raising of hue and cry and caught 3 accused appellants red-handed, has also been declared hostile because too has refused to identify any of the accused appellants present in the trial court. PW-4 Laxman Lal and PW-5 Anil are attesting witnesses on the seizure memo Ex.P/10 by which Rs. 10,000/- were allegedly recovered from acquitted accused Smt. Mangi, therefore, these witnesses does not help the prosecution side in convicting the accused appellants.

6. It is stated that PW-4 Laxman Lal was examined u/s 161, Cr.P.C. also because he too has arrived at the site immediately after the occurrence and was told by Deepak about the occurrence but there are material contradictions between ocular testimony of PW-5 Anil Kumar and PW-4 Laxman Lal, in consequence of which accused Smt. Mangi was acquitted. Even assuming the testimony of PW-4 u/s 161, Cr.P.C. to be correct, it does not help the prosecution because he has not implicated the present appellants in his court statements.

7. In the remaining evidence, PW-6 Rakesh Nolakha though has stated that 3 accused persons Jagdish, Bagga and Nanda were chased and caught red-handed and brought back to the shop but in the cross-examination, he refused to identify any of the accused persons and, therefore, this witness is also not helpful to the prosecution yet the trial court has convicted the accused appellant on the basis of testimony of PW-1 Udai Lal and PW-2 Chand Mal. Admittedly, both these witnesses were not the eye- witness to the occurrence. They reached at the site when three accused appellants, caught red-handed, were brought at the site. All the three accused persons so apprehended were not found with any money, nevertheless, the money allegedly stolen from the shop of PW-3 Deepak. Whether they were the persons who barged into the shop or not, it was for PW-3 Deepak to have stated so because he was the only person who was present in the shop at the time of occurrence. When PW-3 Deepak has refused to recognise any of the accused persons present in the trial court to have barged into the shop and participated in the crime, their conviction could not have been based on the testimony of PW-1 Udai Lal and PW-2 Chand Mal.

8. Similarly, when PW-3 Deepak has stated on oath that only 5 persons barged into the shop and ran away with the bag containing Rs. 25000/- and when only 4 persons were convicted by the trial court, conviction u/s 395, I.P.C., minimum requirement is at least 5 persons.

9. So far as recovery of currency notes is concerned, though both the attesting witnesses on the seizure memo PW-4 Laxman Lal and PW-5 Anil have given contradictory statements as to whether the money was recovered from heap of bricks or from the room and PW-5 Anil has been declared hostile yet believing the above testimony, trial court has acquitted Smt. Mangi at whose instance Rs. 10,000/- were recovered but upon the same evidence. Ram Lal was convicted, from whom currency notes of valuation Rs. 15,000/- were recovered. The uncorroborated testimony of PW-9 Ratan Lal is not sterling worth upon whom said recovery can be proved. Even assuming that recovery is proved by solitary testimony of Ratan Lal, that by itself would not implicate accused appellants because the currency notes were not identifiable nor their numbers have been mentioned anywhere, either in the FIR Ex.P-5 or in the Police statement given by PW-2 Chand Mal or PW-3 Deepak. Be that as it may, trial court, without careful scrutiny of the prosecution evidence, has held them guilty. There is not an iota of evidence, of sterling worth, by which these accused appellants can be roped in for the offence they have been charged with.

10. Though these accused appellants have been charged u/s 395, I.P.C. yet it can not be said that any offence u/s 392, I.P.C. can be proved against them. There being less than 5 accused, conviction u/s 395, I.P.C. was not maintainable.

11. For the reappreciation done above and for the reasons assigned, I find merit in this appeal and therefore, accept the same, set aside the impugned judgment and conviction awarded to appellants vide order dated 29th April, 2000 and acquit them of the charge. They are in custody. If not required in any other case, they be released forthwith.