
(2014) 05 CHH CK 0020
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1181 of 2003

Manharan

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 397, 411, 414

Citation : (2014) 4 MPHT 76 : (2015) 1 MPJR 76

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Raj Kumar Gupta, Advocate for the Appellant; Sudhir Bajpai, Dy. Govt. Advocate for Respondent No. 1 and Mr. J.A. Lohani, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

P. Sam Koshy, J.

1. The instant appeal has been filed by the appellant against the judgment dated 3.1.2000 passed by Additional Sessions Judge, Bilaspur, in Sessions Trial No. 207/1996.

2. By way of instant appeal, the appellant has only challenged a part of the impugned judgment by which the Court below has ordered for returning the seized gold and silver articles to the complainant (respondent No. 2 herein). According to the appellant, the said property is his property which was seized from him and, therefore, under the normal rule of practice, the articles seized should be handed over to the person from whom it had been seized.

3. Case of the prosecution in brief is that the complainant-Moti Lal had lodged an FIR on 6.5.1991 at Police Outpost-Pathariya stating that at around 2 a.m. on 6.5.1991 when the complainant and his family were asleep, the mother of the complainant, PW-7 Nankaiya Bai, woke up and raised an alarm that thieves have entered into the house. Immediately when the complainant got up, the accused

persons abusing the complainant assaulted him with a tabbal on account of which he received injuries and, in the course, the accused persons snatched a gold chain from the neck of Nankaiya Bai and took a tabij (locket) belonging to the father of the complainant and also looted a silver necklace. Immediately thereafter the complainant raised an alarm and on hearing the alarm of the complainant, neighbours of the complainant, PW-2 Padarath and others, reached to the spot. By that time the accused persons had already fled from the scene.

Thereafter, the complainant was immediately sent for medical examination by the police. PW-12 Dr. S.P. Dehariya gave a report (Ex. P-10) which shows that the appellant had in-fact been injured in the course of attack made by the accused persons. During the course of investigation, in the year 1995, certain seizure was made vide Ex. P-6. The said seizure was made on 16.5.1995 at the instance of one of the accused persons, Phooldas, on whose memorandum certain gold and silver articles were seized from the possession of the present appellant-Manharan. The trial against the accused persons proceeded wherein, in all, there was five accused persons namely;

1. Phooldas
2. Gaukaran
3. Patwari
4. Sahebudas
5. Bhanupratap

Admittedly, the present appellant was not made an accused by the police authorities in the instant case.

4. After conclusion of the trial, the Sessions Court passed the impugned judgment dated 3.1.2000 holding that the prosecution has not been able to establish its case beyond reasonable doubts for convicting the accused persons, namely Gaukaran, Patwari, Sahebudas and Bhanupratap, for offence punishable u/s 397 of IPC as well as for convicting the accused Phooldas for the offence punishable u/s 414 of IPC. Accordingly, the Sessions Court acquitted the accused persons of the said offences. However, while acquitting the accused persons of the alleged offences, the Sessions Court in para 28 of the impugned judgment, observed that the seized gold and silver articles to be returned to the complainant (respondent No. 2-Moti Lal) after the appeal period.

5. It is this observation made by the Sessions Court in para 28 of the impugned judgment which the appellant is aggrieved of and has challenged the same by way of instant criminal appeal.

6. According to the learned counsel for the appellant the said observation made by the Court below is totally illegal and is liable to be struck down rather it is to be modified and the said articles are to be given to the present appellant as the same have been seized from the present appellant and there was no reason as to

why the said seized articles are to be given to the complainant-Moti Lal. As per the counsel for the appellant there are more than one reasons as to why the seized articles are given back to the appellant. According to him, firstly, the articles should have been given to the appellant on account of the fact that the articles were seized from him; secondly, he has a receipt in respect of the said articles and, thirdly, the present appellant was not noticed by the Court below while deciding the case and handing over of the said seized articles to the complainant-Moti Lal. Similarly, the present appellant has also not been examined as a witness during the trial before the Court below and he has also not been found to be as an accused person u/s 411 or 414 of IPC. Lastly, since the prosecution case has been destroyed and failed miserably and the accused persons have been honourably acquitted of the charges leveled against them, the entire case of the prosecution gets crashed and, thus, the property seized from the possession of the present appellant should be handed over to the present appellant alone and it cannot be handed over to the complainant-respondent No. 2 under any circumstances.

7. Per contra, learned counsel for respondent No. 2 opposing the claim of the appellant submits that the appeal is not entertainable on account of the fact that it is for the first time that the appellant has claimed possession of the seized property and, therefore, the appellant preferring this appeal that too after more than 3 years from the date of impugned judgment, the same is not maintainable and deserves to be rejected. It is further contended by the learned counsel that if we see the records it would show that the appellant himself had no point of time made any efforts to claim the articles during the pendency of the trial. Learned counsel for respondent No. 2 further submits that from the records it shows that the articles were seized from the possession of the appellant in the year 1995 and that since 1995 there has been no efforts whatsoever on the part of the appellant in any form so as to establish that he has been pursuing with the matter for releasing of the seized articles either on supurdnama or any other means. It is also submitted by the counsel for respondent No. 2 that from 1995 till the present appeal is filed, the appellant did not even care to try for claiming the seized articles. According to the counsel, the appellant deliberately did not make any efforts for seeking the release of the seized articles on account of the fact that the appellant was apprehended of the fact that if he would have made any effort for getting the ornaments back, the police would have implicated him as a co-accused in the proceedings. The appellant waited for all these years ensuring that the accused persons get an order of acquittal in their favour and that only after an order of acquittal he has made efforts in preferring the appeal.

8. After considering the rival contentions put forth by the counsel appearing for the parties, this Court on perusal of the records found that there are certain admitted positions in the instant case which are not in any manner controverted and which are relevant for the purpose of deciding the instant appeal.

9. Firstly, on 6.5.1991, a dacoity took place in the house of respondent No. 2

Moti Lal in the afternoon wherein certain ornaments and cash were looted from his house. Secondly, there was a case initiated by the police against the five accused persons i.e. Gaukaran, Patwari, Sahebudas and Bhanupratap for having committed the act of dacoity in the house of respondent No. 2 and Phooldas for having received the stolen property. Thirdly, after about five years from the date of incident, at the instance of Phooldas, the other accused person, the said valuables were seized from the possession of the present appellant in the year 1995. Thereafter, the matter was put to trial and the case was registered as Sessions Trial No. 207/1996 before the Court of Additional Sessions Judge, Bilaspur. After the trial, vide impugned judgment dated 3.1.2000, the Sessions Judge held that the prosecution has failed to establish its case beyond reasonable doubt so as to reach to the conclusion that it is the said accused persons in the said sessions trial who have committed the offences punishable u/s 397 of IPC and also u/s 414 of IPC against the Phooldas.

10. The other admitted position from the facts and circumstances of the case is that admittedly if the stolen property seized from the possession of the present appellant had been the same stolen property that of respondent No. 2 then the appellant also should have been made an accused by the police for the offence punishable u/s 411 or 414 of IPC. From the fact that the prosecution has not made the present appellant an accused u/s 411 or 414 of IPC and for that matter any other offence and that the accused persons having been acquitted, it would clearly amount that firstly the articles seized do not belong to the complainant-respondent No. 2 and, secondly, since the dacoity allegedly to have been committed by the accused persons itself has not been established and, lastly, it cannot be said that it is the same gold and silver ornaments of the complainant-respondent No. 2.

11. The another admitted position which stands established from the records is the fact that the present appellant, from whom all the articles that have been seized, himself has not been examined by the prosecution before the Court below either as a witness or in any other capacity. Similarly, the present appellant, from whose custody the seized articles were recovered, was also not given any notice of hearing and, without giving any notice in this regard, the trial Court had decided to give the seized articles to a third person i.e. the complainant-Moti Lal. Another aspect which has to be borne in mind is the fact that all along the trial, the so called victim/complainant Moti Lal never made any effort to get the seized articles back stating it to be his.

12. Thus, from the above given admitted positions of the case, it cannot be said that the Court below was right in holding that the seized articles belonged to the complainant-Moti Lal as it has not been properly identified nor has the ownership and title of the said seized property been proved. Similarly, from the records it is also established that the seizure of the seized articles also is doubtful and not worth believing on account of the fact that the seizure witnesses have also not supported the case of the prosecution.

13. If we see the judgment passed by the Hon''ble Supreme Court in N. Madhavan Vs. State of Kerala, , it clearly shows that the Hon''ble Supreme Court has in very categorical terms held that under the normal circumstances the articles which have been seized, after the completion of the trial, should be handed over to the person from whom it is seized unless it is otherwise proved to be belonging to a third person.

14. Similarly, the Hon''ble Supreme Court in Pushkar Singh Vs. State of Madhya Bharat and Another, has laid down a principle that before taking a decision by the Court in respect of handing over of the seized property to another person it is incumbent upon the Court to give a notice to the person from whom the said property was seized so that the person from whom it was seized can also get an opportunity to give his explanation.

15. From the above referred two judgments, it can be clearly inferred that the accused persons in the instant sessions trial having been acquitted holding that the prosecution has failed to establish its case beyond reasonable doubt and that the prosecution having not made the present appellant as an accused for purchasing and buying of the stolen property, it has to be presumed that the articles seized from the possession of the present appellant are not stolen property. Therefore, applying the ratio laid down in N. Madhavan's case (supra), the articles seized automatically should be vested with the present appellant. The impugned judgment is also faulted with for the reason that before it was passed the present appellant was never given an opportunity to explain his case before the Court took a decision of giving the said seized articles to complainant-respondent No. 2.

16. Thus, for the foregoing reasons and submissions made, the instant criminal appeal deserves to be and is accordingly allowed. The operative part, i.e., the order passed in paragraph 28 of the impugned judgment dated 3.1.2000, is set aside/quashed and it is held that whatever articles that have been seized from the possession of the present appellant shall be handed over back to him.