
(2011) 04 MP CK 0028

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 444 of 1995

Raju Yadav and Another

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 307, 392, 394, 397, 450

Citation : (2011) 2 JLJ 271

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—Learned Second Additional Sessions Judge Damoh has passed the impugned judgment dated 7/3/1995 in Sessions Trial No. 125/91 whereby Appellants have been convicted for offence punishable under Sections 457 and 392 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years and fine of Rs. 500/-and rigorous imprisonment for a period of ten years and fine of Rs. 100/-, with default stipulations.

2. Being aggrieved, the Appellants have preferred this appeal u/s 374(2) of Code of Criminal Procedure.

3. Prosecution case in short is that on 20/7/1991 at about 7.50 p.m., when complainant Seetabai (PW6) was watching television alongwith her brother-in-law Atmaram (PW12) and Rajeshwari (PW13), at that time somebody knocked the back door of her house but she has not opened the door. Thereafter, three persons entered into the house by jumping the back wall of her house. One of them caught hold of her and demanded the key of Almirah at the point of country made pistol. Under fear she handed over the key of Almirah to them. The other two persons took out the ornaments, bed-sheet, carpet, sweaters and other clothes from the Almirah and fled away from the spot. When complainant Seetabai shouted, a boy, who was living in the vicinity, came there then she sent

a message with him to the shop of her husband Asandas. Asandas rushed to his house. Dehati Nalisi (Ex,P/3) was lodged by the complainant Seetabai. The same was recorded by Ajay Kumar Raikwar (PW8). During investigation D.S. Parihar (PW11) arrested the Appellants and seized the looted property at their instances. Appellants and seized property were duly identified during test identification parade.

4. After usual investigation, Appellants were charge-sheeted before the Judicial Magistrate, Damoh, who committed the case to the Court of Sessions. Learned Sessions Judge framed the charges under Sections 450, 394/397 and 307 of the Indian Penal Code against the Appellants. They abjured their guilty and pleaded false implication.

5. On appraisal of the evidence on record, learned trial Court acquitted the Appellants of the charges under Sections 450, 394, 397 and 307 of IPC levelled against them, instead Appellants were convicted under Sections 457 and 392 of IPA and sentenced the Appellants as mentioned hereinabove.

6. Learned Counsel for the Appellant submitted that the trial Court has failed to appreciate the evidence on record in its proper perspective. He further submitted that name of the Appellants were not mentioned in the First Information Report. He further submitted that the trial Court committed the error in relying such created identification parade, therefore, he prays for setting aside the conviction and sentence recorded by the trial Court and further prays for acquittal of the Appellants. He further submitted that witnesses of seizure and memorandum have not supported the case of prosecution and trial Court committed an error in believing the sole testimony of seizing officer.

7. On the other hand, learned Counsel for the State justified and supported the impugned judgment and finding of the trial Court.

8. I have perused the impugned judgment, evidence and the other materials on record.

9. Complainant Seeta Bai (PW6) deposed that on the date of incident she was watching television alongwith Atamaram (PW12) and Rajeshwari (PW13). She further deposed that three persons entered into the house by jumping the back wall of her house. One of them, who wearing the black clothes, caught hold of her and demanded the key of Almirah at the point of country made pistol. Due to fear she handed over the key of Almirah to them and one of miscreants took out the gold ornaments like four bangles, three rings, one kangan, one locket, one pair of zhumka, one ear-ring and ten coins of silver, key ring of silver and clothes, from the Almirah and fled away from the spot. When she made hue and cry then one boy came to her house from whom she sent a message to her husband, thereafter her husband Asandas came alongwith police force and then she lodged a report Ex.P/3. Minor child Atamaram (PW12) aged 14 years and Rajeshwari (PW13), aged 12 years substantially corroborated the version of complainant Seeta Bai (PW6).

10. Ajit (PW1) deposed that complainant Seetabai (PW6) was crying and informed him that three miscreants committed loot at her home. He further deposed that complainant asked him to call her husband from his shop.

11. D.S. Parihar (PW11) deposed that on 20.7.1991 he was Sub Inspector at Kotwali Damoh. He further stated that he prepared the spot map Ex.P/14. He further stated that on 27.7.1991 on the basis of disclosure (Ex.P/7) he seized the property at the instance of Kesuram and prepared the seizure memo Ex.P/10. He also deposed that on the basis of disclosure (Ex.P/8) he seized the looted property from Appellant Raju and prepared the seizure memo Ex.P/12. D.S. Parihar also deposed that he also seized the clothes on the basis of disclosure of statement of Kesuram and Raju. He further deposed that he sent the seized articles for identification before Tahsildar. Though Panch Witness of disclosure statement and seizure memo, Pratap Singh Rajput (PW9) has turned hostile yet he admitted in his cross-examination that he signed the disclosure statement as well as seizure memo after read over the same. He is a literate person and living nearby the accused persons. On the basis of aforesaid admission, trial Court draw an inference that this witness telling lie before the Court. I also carefully perused the whole statement of Pratap Singh Rajpoot and I am of the same view that this witness intentionally telling lie but on the basis of his statement that he signed the disclosure statement as well as seizure memo after read over the same, it can be safely inferred that documents were prepared and properties were seized in his presence.

12. It is well established principle of law that seizing officer/police authority cannot be disbelieved only on the basis that he is a police officer. D.S. Parihar despite extensive cross-examination has not deviated from the fact which was deposed in examination-in-chief. There is no enmity brought on record in relation to the accused persons. In these circumstances, trial Court had not committed any error in believing this witness.

13. Learned Counsel for the Appellant submitted that since Rajeshwari (PW13) admitted in her cross-examination that she already seen the Appellants in Kotwali before identifying them. In these circumstances, learned trial Court committed error in believing the statement of complainant Seeta Bai and identification parade conducted by Tahsildar.

14. After careful scanning of evidence of Seetabail (PW6), who is the main witness of test identification parade as well as N.S. Thakur (PW7), Additional Tahsildar, who conducted the identification parade of Appellants as well as the property seized from them. Complainant Seeta Bai specifically denied the suggestion of defence counsel that she has already seen the Appellants in Kotwali before the test identification parade. On the contrary, she explained that police said her that Appellants are in Hawalat but she did not see them because they were inside the Hawalat. She is the main witness of the case and she know very well who caught hold of her and whole incident was committed before her. She has a sufficient time to observe the Appellants as well as their dresses wore

at the time of incident and thereafter she identified the clothes of Appellants also.

15. Since Rajeshwari (PW13) is a minor girl of 12 years and it is not expected of her to reply the answer put up to her by experienced counsel, who is dealing with the criminal cases. In these circumstances, her admission has no meaning regarding Appellants was seen by her in Hawalat. In these circumstances, the prosecution succeeded to prove the fact that Appellants Kesuram and Raju Yadav committed lurking house trespass in the night by jumping the wall of the house of complainant and thereafter they looted the ornaments, clothes and other property of the complainant. Trial Court has not committed any error in appreciating the evidence on record as well as trial Court has also not committed any illegality in recording the conviction under Sections 457 and 392 of IPC. Therefore, conviction recorded by the trial Court, is hereby affirmed.

16. As regard to the sentence, learned Counsel for the Appellants submitted that Appellants are young men of near about 25 years of age, therefore, the sentence of ten years is very harsh and prays for taking lenient view regarding sentence.

17. Considering the facts and circumstances of the case, I am of the view that end of justice would be met, if Appellants be convicted u/s 457 of IPC and sentenced to RI for five years and fine of Rs. 1,000/- and u/s 392 of IPC and sentenced to RI for five years and fine of 1,000/-, instead RI for ten years.

18. In the result, the appeal is partly allowed. Conviction recorded by the trial Court u/s 457 and 392 of IPC, is hereby affirmed. Sentence recorded u/s 457 of IPC is also affirmed, however, sentence to RI for 10 years recorded u/s 392 of IPC is set aside. Instead Appellants are sentenced to RI for five years and fine of Rs. 1,000/-. Both jail sentences shall run concurrently.

19. Set off of period of custody will be taken into account at the time of preparation of super session warrant.

20. Appellants are on bail, their bail bonds and surety bonds stand cancelled. They are directed to surrender before the trial Court on or before 12/5/2011.