

(2019) 06 MP CK 0030

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1988, 2960 Of 2014, 600 Of 2015

Satish Chandra. And Ors

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 19-06-2019

Acts Referred:

Citation : (2019) 06 MP CK 0030

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Saroj Dehariya, Samarth Awasthi

Final Decision : Dismissed

Judgement

1. This judgment shall also govern the disposal of Criminal Appeal No.2960/2014 and Criminal Appeal No.600/2015 which have been filed by Vedram Baghel and Narottam respectively as these criminal appeals have arisen out of judgment dated 27.5.2014 passed in ST No. 151/2013 by the Second Additional District Judge, Mandla, whereby the present appellants have been convicted and sentenced as under:-

Appellant-Satish Chandra in CRA No.1988/2014:

Conviction u/s

Sentence

Default clause

392 r/w 397 of IPC

RI for ten years with fine of Rs.1000/-.

RI for one year.

341 of IPC

RI for one month with fine of Rs.500/-.

RI for ten days.

Appellant-Vedram Baghel in CRA No.2960/2014:

Conviction u/s

Sentence

Default clause

392 r/w 397 of IPC

RI for ten years with fine of Rs.1000/-.

RI for one year.

341 of IPC

RI for one month with fine of Rs.500/-.

RI for ten days.

Appellant-Norattam in CRA No.600/2015:

Conviction u/s

Sentence

Default clause

392 r/w 397 of IPC

RI for ten years with fine of Rs.1000/-.

RI

for

one year.

341 of IPC

RI for one month with fine of Rs.500/-.

RI

for

ten days.

25(1)(1-B) of

the Arms Act

RI for three with fine Rs.5000/-.

years

of

RI

for

six months.

27 of the Arms Act

RI for three with fine Rs.5000/-.

years

of

RI

for

six months.

2. In brief, the case of the prosecution is that complainant Robin Agrawal alias Monti (PW-1) is in the business of dolomite minerals. In Village Bhatiyatola he has dolomite mines and stone crusher in the name and style of M/s Narmada Minerals. His family members are also carrying on the same business at Village Bhatiyatola. In the course of their business the payment to the labourers is made on every Friday so that they can purchase household items on the next Saturday. On 28.6.2013, complainant Robin withdrew a sum of Rs.2,58,000/- from the State Bank of India and HDFC Bank Mandla and put them in a white printed bag and at around 4:00 PM in the evening he started in his Tavera Car bearing registration No. MP04-BA-8511 via Bamhani Jaharmau Mugdara to Bhatiyatola, and at around 5:00 PM when he reached near Mugdara-Bhatiyatola road, at that time three persons, who were already hiding in the bushes, came in front of the complainant's vehicle and tried to stop it. The complainant was acquainted with accused/appellant Narottam (CRA No.600/2015), who threw mud and stones on his vehicle and when complainant stopped his vehicle, accused Narottam took out a country-made pistol from his pocket and put it on the forehead of the complainant, he also snatched the white printed bag in which the money was kept. He also called accused Satish and Vedram by their names and told them to deflate the tyres of the vehicle. Accused Narottam also took the keys of the complainant's vehicle and also took his Samsung Galaxy SC Model Mobile worth Rs.16,000/-. Accused Vedram had also a chilly power in his hand but at that time a truck also came on the spot and seeing this accused persons fled from the spot on a black motorcycle. Thereafter truck driver Pradeep Mahobiya (PW-3) called Bal Kishore Thakur, an employee of the complainant from his own mobile and complainant also informed his brother Lucky regarding the incident. The police was also informed and the Dehati Nalishi (Ex.P-1) was recorded on the spot only. However, after locating the mobile location of accused Narottam, he was arrested and from his possession Rs.one lakh cash, a mobile phone, country made pistol

along with two cartridges and car keys were recovered which he had kept in the house of Shiv Prasad Maravi, the motorcycle was also recovered at the instance of appellant Narottam from the house of one Santosh Janghela (PW-2). The cash amount of Rs.one lakh, however, was recovered at the instance of appellant Satish vide Ex.P-14. Accused Vedram got recovered cash of Rs.58,000/- vide Ex.P-15, from his possession a packet of chilly power was also recovered from his pocket vide Ex.P-16. The poker which was used to puncture the tyres of the vehicle was also recovered at the instance of appellant Vedram vide Ex.P-13 and appellant Satish got recovered a bag in which cash was kept by the complainant vide Ex.P-31 as also Ex.P-22 and P-23. From the HDFC Bank a transaction statement dated 28.6.2013 was also obtained vide Ex.P-5. The country-made pistol recovered at the instance of accused Narottam was sent for examination to the forensic science laboratory.

3. After investigation the charge sheet was filed before the competent Court and after recording the evidence of the parties the learned Judge of the trial Court has convicted the present appellants as aforesaid vide its judgment dated 27.5.2014.

4. Learned counsel for appellant Narottam in Criminal Appeal No.600/2015 has submitted that his sister, brother-in-law and his sister's mother-in-law are also working there and as the complainant had a dispute in respect of payment of wages with aforesaid persons in which appellant Narottam also intervened, hence a false case has been registered against him.

5. So far as appellant Satish Chandra in CRA No.1988/2014 is concerned, it is submitted that he was merely the co-accused and no article has been seized from his possession and only Baldau Patel (PW-13) has deposed against him that Satish was holding one bag which was empty. It is further submitted that even otherwise no specific overt-act is attributed to the present appellant and the main accused is Narottam only. It is further submitted that even if it is found that the appellant has committed the offence, his sentence may be reduced to the period already undergone by him looking to the role ascribed to him.

6. So far as appellant Vedram Baghel in CRA No.2960/2014 is concerned, it is submitted that there are material contradictions and omissions in the statements of the prosecution witnesses and the case could not be proved against him beyond the reasonable doubt. Serious doubts regarding the veracity of the statements of seizure witnesses Kaushal Janghela (PW-4) and Jaideep Thakur (PW-6) have been raised on the ground that both these witnesses are the employees of complainant Robin Agrawal alias Monti and were clearly interested to see that the accused persons get convicted. Thus it is submitted that their defence is to be discarded from the prosecution evidence.

7. On the other hand, learned counsel for the respondent/State has opposed the prayer of the appellants and has submitted that the case has been proved by the prosecution beyond reasonable doubt, as the appellants were identified by the

complainant, no interference is called for.

8. Heard the learned counsel for the parties and perused the record.

9. The FIR in the present case was lodged on 28.6.2013 at 17:50 hours whereas the incident has taken place on the same date at around 1700 hrs. only. Thus the FIR has been lodged within 1 ½ hours from the date of incident. In the FIR the name of three appellants have been mentioned. It is also mentioned that an amount of Rs.2,58,000/-, a mobile phone, and the keys of the Tavera Car owned by complainant Robin Agrawal alias Monti (PW-1) were looted. It is also mentioned in the FIR by the said Robin Agrawal alias Monti that he had withdrawn a sum of Rs.2,58,000/- from the State Bank of India and HDFC Bank, which was kept in the white colour printed bag and was going from his Tavera Car and started from Bhatiyatola at around 5 O'clock and after reaching a short distance three persons came out from the bushes and one of whom he identified as Narottam who threw stone and mud on the vehicle and when the vehicle was stopped by the complainant, said Narottam took out a pistol from his pocket and put it on the head of the complainant. These three persons robbed him of his money, mobile phone as also car of the keys and appellant Narottam called his other accomplice by his name Satish and handed over the bag to him and the other person who was also accompanying them he called by the name of Vedram and told him to deflate the tyres of the Tavera Car. Thus, both these persons acted on the instructions given by the appellant Narottam. Appellant Vedram had also chilly power in his hand at that time and when the appellants saw an oncoming a truck, they fled from the spot. Robin Agrawal alias Monti (PW-1) also identified appellant Narottam to whom he knew, as his sister was working in their quarry. He has also stated that two other persons he would recognize if they came across him and he also identified both the appellants Satish and Vedram vide Ex.P-6 in the Sub Jail, Mandla. This witness has reiterated the story in the trial Court, he also identified all the three appellants in the Court as well. He also identified his mobile phone, keys of the car and hand bag vide Ex.P-7.

10. The defence of appellant Narottam, as stated above is that as his sister Bhisma Bai and her husband Anil were working in the quarry of the complainant, they had a dispute with him with respect of the payment of wages, in which appellant Narottam also intervened and was bent upon to beat the complainant and hence the complainant used to keep a grudge against him, which has led to filing of a false case against him and other persons. The suggestions so made to the complainant have been denied in toto. From the complainant's possession a bank account statement of HDFC bank vide Ex.P-5 has also been recovered by the police, although no statement of SBI has been recovered. In his cross examination on behalf of appellants Satish and Vedram, the complainant (PW-1) has remained firm regarding identification of both these persons by him in the Sub Jail, Mandla. He has denied the suggestion that he has falsely implicated the appellants in the aforesaid offence.

11. Pradeep Kumar Mahobiya (PW-3) is the other eye-witness, who has stated in

the Court that he had identified the appellants and has submitted that on the date of incident when he was driving his truck and reached near the place of incident he saw that the appellants were standing nearby a car and one of them was trying to puncture the car by piercing a poker in its tyres and as soon as he got out of the truck the appellants ran away from the motorcycle and at that time complainant Robin Agrawal alias Monti told him about the incident. This witness has also said that Robin Agrawal alias Monti took his mobile and called his employee and his brother Lucky. He has also identified all the appellants vide Ex.P-9 which took place in the presence of the Tahsildar.

12. Kaushal Janghela (PW-4) is the employee of complainant Robin Agrawal alias Monti (PW-1). He is also a seizure witness. According to him appellant Narottam got recovered cash amount of Rs.one lakh, mobile and keys of the vehicle as also the country made pistol in a bag which was kept in the house of Shiv Kumar Maravi. The aforesaid memorandum is Ex.P-10 and the recovery is effected vide Ex.P-11. He is also a witness to the recovery from appellant Satish at whose instance a sum of Rs.one lakh has been recovered vide Ex.P-13 and P-14 respectively. Appellant Vedram has also got recovered cash of Rs.58,000/- vide Ex.P-15 and P-16 respectively. In his cross examination by appellant Vedram, he has admitted that Vedram informed the police that a sum of Rs.58,000/- are lying with him, however he does not remember as to what was recovered at the instance of appellant Vedram. A suggestion is also put to him that since he is an employee of the complainant, he is deposing in their favour only otherwise his services would be terminated to which he has denied.

13. Jaideep Thakur (PW-6) is also a seizure witness. He has stated that in his presence appellant Vedram got recovered a poker vide Ex.P-22, which was recovered at his instance from the bush nearby the place of incident. Appellant Satish has got recovered a bag vide Ex.P-23. Other witness to the recovery memos is Rupesh Mishra (PW-8), who is also an employee of the complainant. He has also been suggested by the accused persons that he is an interested witness and only because he is an employee of the complainant, he is deposing against the appellants to which he has denied. He has also denied any knowledge regarding Bhishma Bai, sister of accused Narottam, who happens to be a labour in the quarry of complainant Robin Agrawal alias Monti.

14. Regarding the doubt as to the veracity of the statements of these two seizure witnesses viz. PW-4 and PW-6 is concerned, on the ground that both these witnesses are the employees of complainant Robin Agrawal alias Monti (PW-1), this Court finds that on a bare perusal of deposition of the Investigating Officer Shashikant Chourasiya (PW-10), it is found that he has clearly stated that various recovery memos have been prepared in his presence and recoveries have been effected from the accused persons only.

15. So far as the seizure of article and incriminating materials from the accused persons are concerned, the Hon'ble Apex Court in the case of State of Maharashtra Vs. Ramlal, reported in 2015(15) SCC 77 has held as under:-

"19. It also requires to be noted that pursuant to the disclosure statements made by A-1 Ramlal, A-2 Ramchandra, A-3 Limbaji, A-29 Shivaji and A-30 Pan-dit, certain weapons with bloodstains were recovered immediately on the day after the incident. The aforesaid recoveries have been doubted by the trial court inasmuch as the independent panchas had not supported the prosecution case. However, PW 18 Pratap Kisan Pawar in his testimony deposed that such recoveries were made pursuant to the disclosure statements of the accused. It has been laid down by this Court in Mohd. Aslam v. State of Maharashtra¹¹ and Anwar Singh v. State of Rajasthan¹² that the recoveries need not always be proved through the deposition of the panchas and can be supported through the testimony of the investigating officer. The fact that the recoveries were made soon after the incident is again a relevant circumstance and we accept that the recoveries can be considered against the respondents as one more circumstance."

Thus it is apparent from the aforesaid dictum that it is not necessary that the recoveries have to be proved through independent Panch witnesses only as the reliance can also be placed on the statement of Investigating Officer and this Court has no reason to disbelieve the statement of the I.O. (PW-10) in the present case. The recovery of country made pistol from appellant Narottam and the recovery of poker at the instance of appellant Vedram vide Ex.P-22 leaves no manner of doubt that the appellants were involved in the aforesaid case. Vinod Kumar Maravi (PW-11) is the Naib Tahsildar before whom identification of the accused persons was conducted. He has stated that the accused persons were identified by complainant Robin Agrawal alias Monti (PW/1) vide Ex.P-6. He has also stated that he had kept six persons of similar built during the course of test identification parade. The articles were also identified correctly by complainant Robin Agrawal alias Monti vide Ex.P-7.

16. Thus, on due consideration of overall facts and circumstances of the case it is found that a huge amount has been recovered at the instance of the appellants, regarding which they have not given any explanation and it is difficult to believe that only due to enmity of the complainant with appellant Narottam on account of some wage dispute with the in-laws of the sister of the appellant Narottam, he would falsely implicate all the accused persons and would go to such extent to falsely implicate them. That apart, the appellants have not examined any person in their defence and have simply stated that they have been falsely implicated except appellant Narottam, who has also stated that due to enmity with his sister and brother-in-law, complainant Robin Agrawal alias Monti (PW/1) has made false allegation against him. The appellant Narottam has also not examined his sister or brother-in-law in support of his defence.

17. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has been able to make out the case against the appellants for the alleged offence. The sentences imposed against the appellants are commensurate to the offence committed by them and they do not deserve any

sympathy for the same. Accordingly, CRA No.1988/2014, CRA No.2960/2014 and CRA No.600/2015 are hereby dismissed. The appellants Satish Chandra and Vedram Baghel are on bail, they are directed to surrender before the Trial Court within one month from today and in case if they do not surrender, they shall be arrested and be made to suffer the remaining jail sentence as awarded to them by the trial court.

18. A copy of this judgment be sent to the concerned trial Court for information and compliance, if necessary.