

(2011) 12 SHI CK 0145
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 350 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Vipin Kumar

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 34, 380, 454, 511

Citation : (2011) 12 SHI CK 0145

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment of the court of learned Additional Sessions Judge(II), Kangra at Dharamshala, dated 3.5.2003, vide which he acquitted the respondent of the conviction imposed by the learned trial Court upon the respondent for the offence under Sections 454, 380 and 511 IPC.

2. Briefly stated, the facts of the case are that in the evening of 18.12.2001, at about 5.30 p.m., when the complainant Sheel Sharma, PW-4, came back to her house near GPS, Dari, she found a boy standing in front of the door of her house. When she reached near her house, the said boy fled away from the spot and thereafter, she found the kunda of her main door with lock lying on the ground. She raised an alarm "Chor-Choor Pakdo Pakdo". Rakesh Kumar and Roni Pradhan, inhabitants of the area, came to the spot, who apprehended the said boy by chasing him. The said boy disclosed his name as Vipin Kumar, respondent. On opening of the door, the complainant found that nothing was stolen from her house. She reported the matter to the police and on investigation, it was found that Vipin Kumar was accompanied by two other persons, who were also made accused and after investigation, the challan was filed before the learned trial Court. The learned trial Court framed the charge as

against the respondent and other two persons under Sections 454, 380 read with Section 34 and 511 of the IPC. The respondent and two other accused were tried by the learned trial Court and the learned Judicial Magistrate Ist Class (I), Dharamshala, vide his judgment dated 1.11.2002, held the respondent guilty and convicted and sentenced him under Sections 454 and 511 IPC as under:

- a) RI for a period of one year and fine of Rs.1,000/- u/s 454 IPC.
- b) RI for a period of six months and fine of Rs.500/- u/s 511 IPC.

The remaining two accused persons were acquitted by the learned trial Court.

3. On appeal by the respondent, the learned Additional Sessions Judge accepted the appeal and set aside the conviction and sentence imposed upon the respondent by the learned trial Court, vide his judgment dated 3.5.2003.

4. We have heard Mr.Rajesh Mandhotra, learned Deputy Advocate General for the appellant-State and Ms.Vidushi Sharma, Advocate, for the respondent, and have gone through the record of the case.

5. On appraisal of the statement of PW-4 Sheela Sharma, complainant, it is clear that she had seen one boy in front of her house, who ran away. She raised an alarm and two boys brought back the said boy, who had run away, whose name she learnt as Vipin Kumar, the respondent. She never stated in her statement that it was the accused, who was standing near her house, had run away and was apprehended and was brought back to her house by the two witnesses. Therefore, the identity of the respondent cannot be said to have been established beyond any reasonable doubt. It looks also surprising that the locks had already been broken, but no theft was committed and the respondent would continue standing at the place. She stated that no identification parade was got conducted by the police and no theft was committed from her house or any attempt was made. She clearly stated that she does not identify any of the accused persons. This clearly shows that the statement of the complainant herself was sufficient to demolish her case.

6. The prosecution had also examined PW-2 Rakesh Kumar, who had allegedly apprehended the respondent at that time. He stated that when he was coming back to his house, he heard the cries of Sheela Devi Chor Chor. Roni Pradhan was coming behind him. There is a nallah in between the place and from where the accused had run away and they apprehended him and handed over the said person to the complainant. He learnt about the name of respondent as Vipin Kumar, but never stated that it was the respondent, who was apprehended at that time by him or that he has identified the person apprehended by him at that time. He stated that the accused was running at that time towards road. The accused was never got identified from him.

7. The said Roni Pradhan was given up by the prosecution being of same sequence.

8. It is clear from the above discussion of the evidence that the identity of the respondent was not established and, therefore, the learned Additional Sessions Judge had rightly accepted the appeal and acquitted the respondent and had rightly set aside the conviction and sentence imposed by the learned trial Court. The findings recorded by the learned Additional Sessions Judge cannot be termed as perverse for any reason calling for an interference by this Court.

9. In view of the above discussion, we accordingly hold that there is no merit in the appeal filed by the appellant, which stands dismissed. Bail bonds furnished by the respondent shall stand discharged.