

(2012) 09 UK CK 0023

In the Uttarakhand High Court

Case No : Government Appeal No. 2018 of 2001 (Old No. 2404 of 1999)

State of U.P. (Now State of Uttarakhand)

APPELLANT

Vs

Harish Singh

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Penal Code, 1860 (IPC) — Section 380, 411, 451

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2013) 1 NCC 216

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : M.A. Khan, A.G.A, for the Appellant; Suman Sharma, Advocate/
Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 378 of Code of Criminal Procedure, 1973, (for short Cr.P.C.), is directed against the judgment and order dated 11.05.1999, passed by Chief Judicial Magistrate, Almora, in Criminal Case No. 53 of 1995, whereby said court has acquitted the accused/respondent Harish Singh from the charge of offences punishable u/s 451, 380 and 411 of I.P.C. Heard learned counsel for the appellant, and learned Amicus Curiae for the respondent, and perused the lower court record.

2. Prosecution story, in brief, is that on 16.12.1994, at about 9.00 a.m., accused Harish Singh son of Hukum Singh, resident of Village Diyari, said to have entered in the house of informant Himmat Singh (PW 1) of the same village and stolen a wooden box containing jewellery of silver, three sarees and two sweaters. First Information Report (Ex-A1) was got lodged on the very day at 3.00 p.m., with Patwari Palue (In Uttarakhand hills certain Revenue officials have been given police powers). On the basis of the First Information Report Crime No. 04 of 1994 was registered and check report (Ex-A3) was prepared. PW 5 Madan Singh

Birodiya, Patwari, investigated the crime. He interrogated the witnesses and allegedly recovered two sweaters, three sarees and cash of Rs. 523/- from the possession of accused Himmat Singh on 18.12.1994. After completion of investigation, charge sheet was filed by the Investigating Officer against the accused Himmat Singh, for his trial in respect of offences punishable u/s 451, 380 and 411 of I.P.C.

3. The Chief Judicial Magistrate, Almora, on receipt of the charge sheet, after giving necessary copies to the accused, appears to have framed charge of offences punishable u/s 451, 380 and 411 of I.P.C., on 29.07.1998, against the accused/respondent Harish Singh, who pleaded not guilty and claimed to be tried. On this prosecution got examined PW 1 Himmat Singh (informant), PW 2 Harak Singh, PW 3 Nakuli Devi, PW 4 Nanda Ballabh and PW 5 Madan Singh Birodiya, Patwari (who investigated the crime). The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which he alleged that evidence adduced against him is false and he has been falsely implicated due to enmity. However, no evidence in defence was adduced. After recording the evidence of the parties, the trial court found that the prosecution has failed to prove charge of offences punishable u/s 451, 380 and 411 of I.P.C., against accused/respondent Harish Singh and acquitted him of the charge. Aggrieved by said judgment and order dated 11.05.1999, passed by Chief Judicial Magistrate, Almora, in Criminal Case No. 53 of 1995, this appeal was filed by the State before Allahabad High Court from where it is received by transfer u/s 35 of U.P. Reorganization Act 2000 (central Act 29 of 2000), for its disposal.

4. The trial court while recording the acquittal of the accused has observed that PW 1 Himmat Singh, the informant is not the witness of fact. He is simply a formal witness, who lodged First Information Report. As to the statement of PW 3 Nakuli Devi, the trial court has mentioned that she is aged eighty years old and her vision was too weak. As such, her statement that she saw the accused Harish Singh taking away the box, was not found natural and trustworthy, concerned, there appears no recovery of the silver jewellery said to have been stolen, nor there is recovery of the wooden box. Only three Dhotis (sarees), two sweaters and cash of 523/- said to have been recovered from the appellant.

5. Ms. Suman Sharma, learned Amicus Curiae argued that the recovery of Dhotis and sweaters is planted one, and the cash belonged to the accused/respondent. It is relevant to mention here that there is no mention in the F.I.R., about the fact that there was cash lying in the box.

6. It is settled principle of law that if two views are possible, and on appreciation of evidence on record, the trial court has taken one view, it is not desirable on the part of the appellate court to allow the appeal against acquittal.

7. Therefore, having heard learned counsel for the parties, and after going through the lower court record, this Court finds that the view taken by the trial court cannot be said to be perverse or against the record, as such, it is not

desirable on the part of this Court to allow the appeal only for the reason that another view could have been taken. Therefore, the appeal is dismissed. Lower court record be sent back.