
(2003) 02 CHH CK 0015
In the Chhattisgarh High Court
Case No : Criminal Revision No. 215 of 1994

Vijay Kumar Alias Munna

APPELLANT

Vs

State of M.P. (Now State of C.G.)

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 392

Citation : (2003) 02 CHH CK 0015

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : M.P.S. Bhatia, for the Appellant; Prafull Bharat, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—This Criminal Revision has been preferred by the accused/Applicant Vijay Kumar @ Munna against the judgment passed by the learned Sessions Judge, Durg in Criminal Appeal No. 113/93 by which learned Sessions Judge upheld the conviction u/s 392 of the Indian Penal Code passed by the learned Chief Judicial Magistrate, Durg in Criminal Case No. 2985/92 vide judgment dated 7-10-93, in which learned Chief Judicial Magistrate while convicting the accused/Applicant u/s 392 of the IPC sentenced him to undergo seven years rigorous imprisonment and pay a fine of Rs. 5,000/- and in default of payment of fine to undergo six months simple imprisonment. Learned Sessions Judge maintained the conviction however reduced the sentence to five years.

2. The relevant prosecution story for the disposal of this criminal revision is that complainant Doodhnath reported the matter to the police station-Bhilai Nagar on 5th February, 1988 at 22.15 hours in the night that today at about 21.45 hours after completing his work he left his office at 20.30 hours and was coming on the cycle to his residence, on the way, he was going to Kotwali for delivering the

urgent dak. When he reached near M.D. Bungalow Chowk Sector-9, Hospital Road, three boys were standing on the side of the road and their bicycles were also standing near them, they stopped him in the middle of the road and one of the boys asked the other boy naming Vijay to look out knife, on this he took out the knife and the second person's name was called out by the other persons and Vijay said snatch the money, then other person took out Rs. 50/- from his pocket forcibly. Vijay after taking out the knife asked him where you are residing and what are you doing. When the complainant informed him that I am working in the police office Bhilai and I am going to my residence, the other person namely Dara torn his pocket of the shirt, and other boy snatched his wrist watch H.M.T. 17 black dial. On receiving this report Ex.P/3 the S.H.O. police station registered a case. During investigation the accused was arrested on 9th February, 88 and during the police custody the accused/Applicant gave information u/s 27 of the Evidence Act which was reduced in writing by the Investigating Officer as Ex.P/1 and in pursuance to this information the watch was recovered at the instance of the accused through Ex.P/2. Some other watches were also recovered. Thereafter the identification parade and other formalities were conducted and watch was also got identified and after completion of the investigation the police filed a charge sheet against the accused as well as other two persons. Learned Chief Judicial Magistrate convicted the accused/Applicant and other co-accused Dara, however acquitted the third person.

3. I have heard Shri M.P. Section Bhatia, learned Counsel for the accused/Applicant as well as Shri Prafull Bharat, learned Panel lawyer for the State.

4. The main argument of the learned Counsel for the accused/Applicant is that P.W. 1 Bharat Nai has said in his statement that he knows the accused Vijay, whereas in other case this very witness had said that he can not recognize Vijay. He further argued that P.W. 1 says that only one watch was recovered whereas Ex.P/2 shows that three watches were recovered from the Applicant, and no knife has been recovered in this case, and the identification memo of the watch has not been exhibited in this case, therefore the conviction of the accused cannot be sustained.

5. In the first instance if we look at the judgment of the appellate Court there is a mention that learned Counsel for the Appellant Mr. V.G. Tamaskar did not challenge the finding of the trial Court, he requested only for taking a lenient view. Thereafter however he has argued that as on the basis of the same evidence third accused person has been acquitted; as such on the basis of that very evidence the other accused persons cannot be convicted. But this argument could not find favour of the appellate Court and the appellate could not find favour of the appellate Court and the appellate Court maintained the conviction. Therefore in the first place all these three points were not raised before the appellate Court, therefore now that too in a criminal revision, in my opinion, counsel for the Applicant is not entitled to raise these points for the first time. More over in a criminal revision the Court is not entitled to appreciate and

scrutinize the evidence as is done by the appellate Court. The revision Court has very limited jurisdiction/scope to appreciate the evidence, that too only in those cases where it seems that the evidence available on record has been totally misread or ignored or a conclusion contrary to the evidence available on record, has been taken by the trial Court, by the first appellate Court or on a question of law this Court in revision can look into the evidence. But in the present case there is no such grave mistake or illegality has been committed by the trial Court and the appellate Court in appreciation of the evidence.

6. As far as the question of recognition of the accused/Applicant by P.W.1 Bharat Nai is concerned, because he has not confronted with the previous statement made in the other case, therefore this argument cannot be considered. The second point raised by the counsel for the accused/Applicant is that vide Ex.P/3 three watches were recovered whereas P.W. 1 Bharat Nai said that only one watch was recovered. If we look at the statement of P.W. 1 Bharat Nai, he has said that the police persons recovered one wrist watch, this statement was only with regard to the watch which the accused/Applicant was robbed in this incident and this is not such a contradiction upon which the whole testimony of the witness can be disbelieved. The other argument advanced by the learned Counsel for the accused is that P.W.2 Doodhnath has said in para-10 of his statement that at the time of giving information to the police he reported that Vijay snatched his Cico Watch and whereas in fact the H.M.T. watch was recovered. In this argument also there is no force. It is true that this witness has said that at the time of giving the report in the police station he reported that his Cico watch was snatched by the accused Vijay but if we look at the report Ex.P/3 submitted by the complainant Doodhnath in this report it is very specifically mentioned that one H.M.T. watch black dial, steel chain worth Rs. 500/- was robbed from him, therefore even if he reported that the H.M.T. watch robbed and it is not stated in the statement, that was an oral evidence due to the lapse of time and due to human error it can happen.

7. As far as the recovery of the knife is concerned it is not necessary that in all probabilities the weapon of the offence is recovered then and then the offence can be considered as proved. If we look at the statement of Bharat Nai (PW 1) and Doodhnath (PW 2) they have specifically said that the accused/Applicant gave information to the police Ex.P/1 and the watch was recovered at his instance through Ex.P/2 and P. W.2 has very specifically said that the accused Vijay is the person who robbed his watch at the knife point. There is no reason to disbelieve the statements of these two witnesses more particularly the prosecution witness is a public servant and it is not shown that he has any bias, grudge or animosity against the accused/Applicant. Therefore the statement of these two witnesses cannot be disbelieved and based on these statements the report of watch and Rs. 50/- is proved. Therefore if the knife is not recovered the prosecution story cannot be disbelieved on that count only.

8. Counsel for the accused further argued that in this case as per the statement

of P. W.2 extortion has not been proved. If we look at the statement of P. W.2 he has very specifically said that three accused persons stopped him in the night on the road and accused Vijay took out a knife and on the knife point Rs. 50/- were taken out from his pocket and watch was snatched, even his pocket of the shirt was also torn by these persons and that shirt has also been recovered. Therefore the accused Vijay has rightly been convicted u/s 392 of the IPC and there is no illegality or infirmity in the judgment of the trial Court as well as the appellate Court therefore the conviction cannot be set aside and the same is liable to be confirmed, which is hereby confirmed.

9. As far as the sentence part is concerned, learned Counsel for the accused/Applicant said that the very severe sentence has been passed against the accused/Applicant because the complainant was a police constable. I have considered this aspect. The accused/Applicant is facing criminal trial since 1988, he has already suffered a lot and as per the mark-sheet produced by the counsel for the Applicant it shows that he is still pursuing his studies and in this case the accused/Applicant has already served more than 8 months of sentence, therefore he may be allowed to the extent of sentence already undergone.

10. There is nothing on record which goes to show that some other criminal cases are pending against the accused/Applicant and there is no other evidence which shows that the accused is involved in other criminal activities. In the given situation I am of the opinion that looking to the situation that the accused/Applicant has already suffered a lot, he is facing the trial since 1988, more than 14 years have elapsed, and only Rs. 50/- and one watch was robbed, therefore the ends of justice would met if the accused is sentenced to the period already undergone which he has undergone more than 8 months.

11. Therefore, the revision is partly allowed to the extent that while maintaining the judgment of conviction of the accused/Applicant u/s 392 IPC, the sentence of five years imprisonment is reduced to the period of 8 months which has already been undergone by the accused/Applicant. He is on bail, his bail bonds are cancelled.