



CF0000080902

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cr.R. 134 /96

APPLICANT
(IN Jail)

: Laxmikant alias Raju son of Shyamlal
Dixit, aged about 20 years, cultivator
and resident of village Semartala,
Police Station Koni, at present at
Chakarbhata, Police Station Chakarbhata
District Bilaspur.

-Versus-

NON-APPLICANT

: The State of Madhya Pradesh

CRIMINAL REVISION UNDER SECTION 397/401 CRIMINAL PROCEDURE CODE

CONVICTION

U/s 380 & 457 I.P.C.

SENTENCE

3 months R.I. on each count
and fine of Rs.500/-, in default,
imprisonment of 2 months.

1465
Filed on 1-2-96
by Sh. S. Sharma
Advocate

Being aggrieved by the judgment dt.30.1.96 in

Criminal appeal no.129/93 by Vth Addl.Distt.Judge, Bilaspur,

R.L.D. arising out of the judgment dt.18.8.93 in Criminal Case

no.714/91 by Judicial Magistrate First Class, Bilaspur, the

applicant submits this memo of revision as under:-

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CRIMINAL REVISION NO.134 OF 1996

Laxmikant alias Raju

Versus

The State of Madhya Pradesh
(now Chhattisgarh)

ORAL ORDER

Per R.S. Garg, J :-

The applicant being aggrieved by the judgment dated 18/08/1993 passed in Criminal Case No.714 of 1991 by the learned Judicial Magistrate First Class, Bilaspur convicting the applicant under Sections 457 and 380 of the Indian Penal Code and sentencing him to undergo R.I. for two years under each count and pay fine of Rs.500/- under each count in default of payment of fine to undergo two months imprisonment preferred Criminal Appeal No.129 of 1993. The learned fifth Additional Sessions Judge, Bilaspur by his judgment dated 30/01/1996 confirmed the findings recorded by the learned trial Court, but however, reduced the jail sentence to three months. Being aggrieved by the said judgment the applicant has come to this Court.

(2) The prosecution case in brief was that on 22/06/1991 when complainant Ram Singh and his family members had gone to a different village to attend the marriage functions, in the late night when none was present in the house certain miscreants after removing the roof tiles entered in the house and committed theft. The report was lodged on the same day. The applicant and others were arrested, their memorandums were prepared and certain articles were

recovered. The said articles were put for identification. Armed with evidence and the other documents the police filed the challan. The two courts recorded the findings against the applicant convicted and sentenced him as referred to above.

(3) Shri V.P. Shrivastava, learned counsel for the applicant submits that from the statements of PW-5 Maya Sharma it does not appear that on 05/07/1991 she prepared the memorandum of the applicant or made any recoveries from him on 05/07/1991. According to her Ex.P/4 and P/5 on which the two Courts have placed strong reliance are dated 05/07/1991. He further submits that the alleged identification proceedings relating to the property are bad and illegal because PW-7 Saraswati Bai said before the Court that she did not identify the articles in any proceedings and from the statements of PW-2 Manoj Singh Thakur it would appear that the articles were shown to him in the police station and he had identified the same. He further submits that the Courts below were unjustified in ignoring the salient features in the present case.

(4) Shri Praful Bharat, learned counsel for the State, on the other hand, submits that the two Courts have recorded correct findings.

(5) PW-5 Maya Sharma, Sub Inspector who had prepared the memorandums and seized certain articles from the possession of the present applicant had stated in paragraph 2 of her statements that on 12/07/1991 she recorded the memorandum of the accused and seized the articles. She nowhere said that the memorandum was prepared or the articles were recovered on 05/07/1991. The two Courts were unjustified in recording a finding in favour of the prosecution that the memorandum was prepared and the articles were

recovered on 05/07/1991. It is further to be seen that in paragraph 5 said Maya Sharma had clearly stated that she had arrested the accused on 05/07/1991. Present is not a case where under some lapses or loss of memory said Maya Sharma stated that she prepared the memorandum and recovered the articles on 12/07/1991. As nobody says that the memorandum was prepared and the articles were recovered on 05/07/1991 the findings recorded by the two Courts would certainly become bad. From the records it would appear that PW-7 Saraswati Bai did not say in the Court that ^{on 12/7} any day prior to her statements in the Court she had identified the articles. If that be so, the signatures of ~~one~~ Saraswati Bai on Ex.P/1, the identification proceedings, would become doubtful. The identification proceedings were conducted by one Ashwani Kumar Pandey. Said Ashwani Kumar Pandey has not been examined by the prosecution. Nobody knows that who was Ashwani Kumar Pandey, what office he held or what profession he belonged to. Ex.P/1 does not even say that how many articles were mixed in the articles which were put for identification. It simply records that certain articles were mixed. Said document Ex.P/1 says that these identification proceedings were conducted at a place known as "Talab Par". On the other hand Manoj Singh Thakur (PW-2) says that the identification proceedings were conducted in the police station. He does not say that the proceedings were conducted by Ashwani Kumar Pandey. On the other hand he says that the proceedings were conducted by Netam Saheb.

(6) From the records it does not appear that any proper identification proceedings was conducted. One witness who appended signatures to Ex.P/1 refuses participation in the identification proceedings and the other witness gives

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a death ^{name} ~~name~~ to the identification proceedings by changing the place and changing the person who conducted the proceedings.

(7) Taking into consideration the prosecution ^{case} ~~as~~ it is I am unable to hold that that it has proved its case beyond shadow of doubt ^{or} ~~to~~ a reasonable certainty.

(8) The findings recorded by the two Courts deserve to and are accordingly set aside. The applicant is acquitted of all the charges. He is on bail, his bail bonds are discharged. The fine amount if any deposited by the applicant be returned back

Sd/-
R.S. Garg
Judge

28.9.2001