

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.91 of 1993.

Date of decision: October 31, 2007.

State of H.P. Appellant.

Vs.

Jagdish Chand. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No .

For the Appellant : Mr. S. D. Vasudeva, Addl. Advocate General with
Mr. D.S. Nainta, Dy. Advocate General.

For the respondent: Mr. Yoginder Paul, Advocate.

Surjit Singh, J (oral):

Heard and gone through the record.

Respondent was sent up for trial, for the offences punishable under Sections 457 and 380 of the Indian Penal Code, for allegedly committing the offences of house breaking and theft, in the house of PW5 Shri Chitranjan Bhatnagar at Sundernagar, on the night of 25th of July, 1987. A large number of articles, including the gold ornaments, Sarees of the wife of PW5, other clothes, Camera, suite-case, mixer-grinder, a pair of goggles, purses, leather bags, leather gloves, golden nath (nose pin), Tikka (an ornaments worn on the forehead) and Jhumkian (ear rings) had been stolen. The matter was reported to the police. Accused was arrested. He allegedly made two disclosure statements Exts.PW2/A and

Whether reporters of local Papers may be allowed to see the judgment? .

PW11/A, pursuant to which certain articles were recovered. On the basis of disclosure statement Ext.PW2/A, Nose Pin, Tikka and a pair of ear rings were recovered from PW9 Surender Kumar, a Goldsmith. Pursuant to the other disclosure statement Ext.PW11/A, a pair of goggles, VIP suite case, a pant, one shawl, one shirt, a pair of leather gloves, three purses, one neck-tie and one pack of playing cards were recovered from the house of one Roshan Lal, in village Jawali of Kangra district.

The respondent was then sent up for trial. The Magistrate charge-sheeted him with the offences under Sections 457 and 380 of the Indian Penal Code and proceeded to try him, on his pleading not guilty. Ultimately, the respondent was acquitted with the finding that the charges did not stand proved beyond reasonable doubt.

Ex.PW2/A is the memo of disclosure statement, allegedly made by the respondent, in presence of PW2 Shankar and one Roop Lal. Roop Lal was not examined by the prosecution. PW2 Shanker did not say that any disclosure statement was made by the accused. He simply stated that he was shown the aforesaid three items at the police station and was told by a police official that these had been recovered and he was asked to sign the memo Ext.PW2/A. The witness was not cross-examined by the prosecution, nor was he confronted with any previous statement supposedly made by him, with regard to the alleged fact of making the disclosure statement by the respondent. Recovery of the aforesaid three items was allegedly effected vide memo Ext.PW7/A. To prove the recovery, the prosecution examined PW7 Shri Babu Ram, who said that the accused had made a disclosure statement about the sale of the three ornaments to Surender Kumar (PW9). The witness stated that the accused was not there at the shop of Surender Kumar, when the recovery was effected.

The ornaments were not produced in the court and consequently, none of the witnesses examined by the prosecution i.e. PW5 Shri Chitranjan Bhatnagar, his wife Dr.Sherry Bhatnagar and PW9 Surender Kumar, a Goldsmith or PW8 Babu Ram could say, which were those ornaments.

Similarly, the articles allegedly recovered, pursuant to the disclosure statement Ext.PW11/A were also not produced in the court.

In view of the above stated position, we see no reason to interfere with the judgment of acquittal, recorded by the trial Magistrate. The appeal is, therefore, dismissed.

(Surjit Singh)
Judge.

October 31, 2007.
(PDS)

(Surinder Singh)
Judge.