

HIGH COURT OF MADHYA PRADESH : JABALPUR

Cr.A. No. 523/1995

State of M.P.

Versus

Krishna and others

For the appellant: Shri Sameer Chile, Govt. Advocate

For the respondents: Shri K.D. Singh, Advocate.

Present: **Hon'ble Mr. Justice S.C. Sinho**

J U D G M E N T
(28.03.2011)

This criminal appeal under Section 378(1) of Cr.P.C. has been filed by the appellant/State being aggrieved by the judgment dated 11.08.1994 passed by J.M.F.C., Mandla in Criminal Case No.494/1992, whereby the respondents have been acquitted from the charge under Sections 381/34 and 414 of I.P.C.

2. As per prosecution case, all the respondents are real brothers. Respondent No.2 Ratanlal @ Manjoo and respondent No.3 Ramlal were working in the jewelry shop of complainant Sohanlal Soni at Mandla. Complainant has entrusted jewelry to his servants respondents No.2 and 3 and went along with his family to Nainpur on 20.04.1987. When he returned therefrom on 22.04.1987 he could not find 10 pairs of payal and gold about 3 tolas and 14 Aana which were kept for manufacturing bangles. Complainant inquired from respondents No.2 and 3 and when they did not disclose anything he lodged Ex.P-1 F.I.R. in police station Mandla on 24.04.1987 against respondents No.2 and 3. During investigation, Shri R.G. Chourasiya PW-7

Investigating Officer took the memorandum statements of respondent No.2 Ratanlal as per Ex.P-4, memorandum statement of Krishna as per Ex.P-5 and memorandum statement of Ramlal respondent No.3. Respondent Ratanlal revealed in his memorandum statement Ex.P-4 and thereafter Ex.P-5 memorandum statement of respondent No.1 was recorded and as per seizure memo Ex.P-6 recovered one gold chain of 24 grams and one ring of gold and one locket of gold and raw material and vide Ex.P-7 and 3 pairs silver payal were recovered as per seizure memo. Further Ramlal gave memorandum statement Ex.P-8 to the effect that he has melted 7 pairs of silver payals and kept the silver in his house and on his information as per seizure memo Ex.P-9 aforesaid melted silver of 318 grams were recovered. After due investigation a charge sheet was filed.

3. Learned Magistrate vide impugned judgment dated 11.08.1994 acquitted respondent No.1 under Section 414 of I.P.C. and respondents No.2 and 3 under Section 381 of I.P.C.

4. I have heard both the counsel at length.

5. It is not disputed before this Court that respondents No.2 and 3 were working in the jewelry shop of Sohanlal Soni at Mandla. It is also not disputed by learned Advocate of the respondents that as per seizure memo Ex.P-3 gold, Ex.P-6 gold ornaments and gold, Ex.P-7 3 pairs of silver Payal, Ex.P-9 approximately 318 grams of silver was recovered from these respondents. Respondents have categorically stated that they also deal with the manufacturing of jewelry business and aforesaid seized articles are owned by them.

6. Learned Magistrate in para 18 of the impugned judgment rightly held that complainant Sohanlal has

admitted in para 22 of the cross examination that he keeps the stock register of his shop and as per para 26 aforesaid register was seized by Investigating Officer R.G. Chourasiya but Shri Chourasiya has admitted in para 12 of his cross examination that as per the records of the court neither such register was seized from the shop of the applicant nor filed along with the charge-sheet. In aforesaid circumstances, trial Court has rightly held that aforesaid register was a very important document and it could prove that when these articles were received by complainant and thereafter stolen from his shop specially in a circumstances when the respondents are taking this specific defence that they are also jewelers and aforesaid articles were owned by them and they were brought by them for sale. Further as per Ex.P-1 F.I.R. 3 tolas of gold was recovered whereas as per seizure memo Ex.P-5, 30 grams of gold as per seizure memo Ex.P-6 40 grams of gold. Thus instead of 33 grams of gold 70 grams of gold was seized. In the same manner approximately 400 grams silver was stolen whereas as per seizure memo Ex.P-7 87 grams was recovered. Apart from this, complainant Sohanlal has admitted in para 13 that aforesaid silver payals were manufactured at Jabalpur and he has not put any seal or sign of his shop, therefore, it is not proved that aforesaid payals were owned by complainant.

7. Apart from this, learned counsel for the defence has given a suggestion to complainant Sohanlal Soni in para 14 of the cross examination that aforesaid payals were purchased by respondents and kept in his shop for sale.

8. Further, learned court below has rightly held that there were two witnesses of memorandum statement Keshav Prasad and Murlidhar but Murlidhar was not produced by prosecution whereas another witness Keshav Prasad has admitted in para 21 of the cross examination

that investigating officer summoned him and took his signatures on Ex.P-3 to Ex.P-7. It appears that in the same manner Sukhichand Jain another witness has also admitted in para 11 of the cross examination that while he was sitting in the house of Murlidhar aforesaid articles were brought by respondents and in his presence aforesaid articles were not recovered from the respondents. Thus both the independent witnesses of memorandum statement of respondents as well as seizure have not supported the prosecution case and in this background sole evidence of Investigating Officer R.G. Chourasiya who recorded the memorandum statements and effected seizure is rightly disbelieved. Trial Court has rightly held that Investigating Officer has seized the stock register from the complainant shop and even did not file with the charge sheet.

9. The Hon'ble Apex Court in **Tota Singh and another vs. State of Punjab, AIR 1987 SC 1083** has held thus:

“The mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterized as

perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

10. On facts and in the circumstances of the case, the impugned judgment relating to acquittal of respondents cannot be said to be perverse and illegal. No interference with the acquittal of respondents is required.

11. Consequently, this criminal appeal is hereby dismissed.

(S.C. Sinho)
Judge

psm