

HIGH COURT OF JUDICATURE AT JABALPUR
(M.P.)
Criminal Appeal No. 198/1996

PRESENT :
HON'BLE SHRI JUSTICE **G.S. Solanki**

Pushpendra Singh S/o Bhupat Singh
Versus
State of Madhya Pradesh

Shri R.K. Samaiya, learned counsel for the
appellant.
Shri Sanjay Yadav, Panel Lawyer for the State.

J U D G M E N T (O R A L)
(18.07.2011)

Third Additional Sessions Judge, Chhatarpur passed the impugned judgment dated 19/1/1996 in ST No. 173/91 whereby appellant has been convicted under Section 393 of the IPC and sentenced to undergo rigorous imprisonment for two years. Being aggrieved by the said judgment, appellant has filed this appeal under Section 374 (2) of Code of Criminal Procedure.

2. Prosecution case in short was that on 21.4.1991 at about 10.00 O'clock in the night when complainant Mahesh Kumar Chourasia (PW6) was going to his house from bus stand, near an electric pole appellant Pushpendra having a country made hand grenade tried to snatch money from his pocket. It is further alleged that witnesses Balram Singh and Laxman Prasad Chourasia were also with him at the time of incident. Complainant Mahesh Kumar lodged

the report Ex.P/5 at Police Chouki, Gadimalhara, Mahrajpur on 22/4/1991. Offence was registered at Police Station Mahrajpur and appellant was arrested. During investigation, a country made hand grenade was seized from him. Same was sent to Forensic Science Laboratory, Sagar for chemical examination.

3. After usual investigation, appellant was charge sheeted before Judicial Magistrate, Navgaon. Learned Judicial Magistrate, Navgaon committed the case to the Court of Sessions.

4. Learned Additional Sessions Judge, Chhatarpur framed charges under Section 398 of IPC and Section 3/4 of Explosive Substance Act against the appellant.

5. Appellant abjured the guilt and pleaded that he has been falsely implicated. Kishanlal (DW1) was examined as his defence witness.

6. On appraisal of evidence on record, learned Judge though acquitted the appellant to the charges under Section 398 of IPC and Section 3/4 of Explosive Substance Act levelled against him but convicted him under Section 393 of the IPC and sentenced as mentioned hereinabove. Hence this appeal.

7. Learned counsel for the appellant submitted that the learned trial Court has committed

illegality in not appreciating the evidence on record in its proper perspective. He further submitted that enmity of complainant with appellant proved on record. As per this fact, the trial Court committed illegality in believing the complainant Mahesh Kumar

8. On the other hand, learned counsel for the respondent/State supported and justified the impugned judgment.

9. I have perused the impugned judgment, evidence and other material on recorded.

10. Complainant Mahesh (PW6) deposed that when he was going towards his home, appellant tried to snatch money from him by showing hand grenade. He further deposed that when Balram and Laxman came there, the appellant fled away. He further deposed that he lodged the report Ex.P/5 at Police Chouki Gadimalhara. In his cross-examination, he admitted that a report of rape was lodged by his sister-in-law against the appellant. He further admitted that he had given statement as a witness in one another case and grenade will be exploded, this fact did not find place in his FIR Ex.P/5.

11. Balram (PW4) exaggerated the fact more than what deposed by complainant ?. He deposed that appellant put up his hand in the pocket of complainant Mahesh. While this fact has not deposed by Mahesh himself. He also admitted that he had

enmity with the appellant.

12. Considering the fact that the complainant himself has not deposed that appellant put him in fear of instant death or of instant hurt as well as enmity between complainant and appellant brought on record, same was not considered by the trial Court, hence complainant cannot be said to be believable witness.

13. In these circumstances, offence under Section 393 of IPC cannot be said to be proved. Learned trial Court committed illegality in recording the conviction and sentence against the appellant.

14. The appeal is allowed. The conviction and sentence recorded by the trial Court is set aside. The appellant is acquitted to the charges under Section 393 of IPC levelled by the trial Court.

15. Appellant is on bail, his bail bonds stand discharged.

(G.S. Solanki)
JUDGE
18/07/2011

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