



Saddam Hussain v. State of Rajasthan, (Rajasthan)(Jaipur Bench) **Law Finder Doc Id # 2491280**

2024 NCRJ-JP 4854

RAJASTHAN HIGH COURT

(Jaipur Bench)

Before:-**Mr. Praveer Bhatnagar, J.**

S.B. Criminal Revision Petition No. 318 of 2023. D/d. 08.02.2024.

Saddam Hussain - Petitioner

Versus

State of Rajasthan - Respondent

For the Petitioner : Mr. Abhishek Dadhich Advocate.

For the Respondent : Mr. Mahendra Meena - PP.

Evidence Act, 1872 Section 27 Criminal Procedure Code, 1973, Section 401

ORDER

Mr. Praveer Bhatnagar, J. - By way of filing present criminal revision petition under Section 397 read with Section 401 Cr.P.C. the petitioner has assailed the judgment dated 28.02.2023 passed by learned Additional Sessions Judge No.3, Ajmer in Criminal Appeal No.05/2021 (CIS No.50/21), whereby, the learned appellate court while dismissing the appeal of the accused-petitioner has upheld the judgment of conviction and order of sentence dated 02.02.2021 passed by learned Additional Chief Judicial Magistrate No.1, Ajmer in Criminal Case No.6036/2018, whereby, the revisionist-petitioner was convicted and sentenced as under:-

Under Section 379 I.P.C. :

Three years' rigorous imprisonment.

2. Brief facts of the case are that on 16.03.2018 complainant Ajay Kumar Jain lodged a written report at police station Sadar Kotwali, Ajmer stating therein that on 16.03.2018 at around 03:00 AM when he was going to the Temple, his car Maruti-800 bearing registration No.RJ01-C-9744 standing outside the house from last four days was stolen by someone. On the aforesaid report, an FIR No.56/2018 was registered and after usual investigation, charge-sheet under Section 379 I.P.C. was filed against the present petitioner.

3. The Learned Magistrate framed charges against the petitioner for the above offence and upon denial of guilt by him, commenced the trial. During the course of trial, the prosecution in order to prove the offence, examined as many as 8 witnesses and exhibited 10 documents. The accused, upon being confronted with the prosecution allegation, in his statement under Section 313 Cr.P.C., denied the allegation and claimed to be innocent. Then, after hearing learned counsel for the parties and upon meticulous appreciation of the evidence, learned trial court convicted the accused for the offence under Section 379 I.P.C. vide judgment dated 02.02.2021. Aggrieved by the judgment of conviction, he



preferred an appeal, which was dismissed by the learned appellate court vide judgment dated 28.02.2023 affirming the judgment passed by the trial court. Hence, this revision petition is filed before this court.

4. It is argued by learned counsel for the petitioner that the name of the accused-petitioner was not mentioned in the FIR and the vehicle in question was recovered from an open place, which is available for public use. It is also argued that a bare perusal of the statements of PW-6 Udai Singh and PW-7 Moinuddin makes it clear that the accused-petitioner was brought on production warrant and no vehicle was recovered from him. It is further argued that the learned trial court while appreciating the evidence should keep in mind the two cardinal principles that the guilt against the accused must be proved beyond reasonable doubt and the burden on the accused is not so heavy to prove the plea taken by him as it lay on the prosecution. The burden can be discharged by the accused merely showing the preponderance of probability in favour of the plea taken by him. It is prayed that the judgments passed by learned courts below may be set aside and revision petition may be allowed.

5. Learned Public Prosecutor supported the judgments passed by learned courts below and opposed the revision petition.

6. Heard learned counsel for the parties and perused the material available on record.

7. In order to prove the fact regarding theft of maruti car bearing registration number RJ-01-C-9744 on midnight of 15.03.2018 to 16.03.2018, prosecution has relied upon the testimony of Ajay Kumar (PW-1), who is the registered owner of the stolen car. PW-1 Ajay Kumar in his statement before the Court has clearly stated that he parked his vehicle outside his house and came out at 03:00AM on 16.03.2018 and found his maruti car bearing registration number RJ-01-C-9744 missing. He has further stated that written complaint i.e. Ex.-P1, bears his signature.

8. PW-2- Mudita Jain, wife of PW-1- Ajay Kumar, has corroborated the version of PW-1- Ajay Kumar. Therefore, this fact was proved by the prosecution that the car of complainant PW-1- Ajay Kumar was found missing at midnight of 16.03.2018.

9. The accused petitioner has been involved in the case on the ground that after furnishing information under Section 27 of the Evidence Act, the car was recovered from the instance of accused petitioner.

10. In order to prove the above fact the prosecution has relied upon PW-8 Radheyshyam, who is the investigating officer of the case and PW-6- Udai Singh. PW-8- Radheyshyam in his examination-in-chief has stated the fact that he was conducting investigation in the case under Section 379 of IPC and during the investigation, he arrested accused- Saddam Hussain. He further stated that accused-Saddam Hussain voluntarily disclosed the information that he has stolen a car bearing registration number RJ-01-C-9744 and hidden it in the shrubs in front of drainage channel situated near Gugra Ghati. The said information was recorded as Ex.-P-10 on 24.03.2018 at 04:15 PM and at the instance of accused petitioner, the recovery of stolen car was effected from near Gugra Ghati, Jaipur Road.

11. In convicting the accused Saddam Hussain the trial Court mainly relied on a solitary piece of evidence, the Seizure Memo which was prepared after recovery of the stolen car on the instance of the Accused Saddam's information under section 27 of the Evidence Act.

12. The trial court drew presumption under section 114 of the Indian Evidence Act, 1872 ("Evidence Act", hereafter), to the extent it provides that "a man who has stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his



possession". The trial court believed the testimony of two police officials before whom the recovery of the stolen car was affected.

13. It is admitted position that no independent witnesses were associated while making recovery of the car. It is also undisputed that the recovery of the stolen car was made from the open place just in the vicinity of the main National Highway, hidden in the shrubs.

14. It is also undisputed that said recovery was made in the time at 3.00 pm. The police did not endeavour to associate any independent witness even though the complainant or owner of the car or any independent witness could easily be associated. It is settled law that police officials are competent witnesses and their testimony can not be discarded. It is always a rule of prudence that evidence of police witnesses needs to be scrutinized more cautiously in comparison with the other witnesses as there may be a probability of false implication. If the testimony of police officials transpires the confidence of the court then the court may convict the accused.

15. In the instant case apart from two police officials namely PW-6 Udai Singh and PW-8 Radheyshayam no independent witness remained associated with the recovery. The police officials did not even make a proper seizure memo. The place of seizure memo does not show the precise distance from the main National Highway. It even does not indicate the distance of the shrubs near the drainage channel from where the car was recovered. The recovery place is conveniently accessible to the public and not a secluded place.

16. The testimony of the seizure witnesses is the only thread in the present case that could tie together the loose garland, and without it, the very seizure of stolen property stands falsified. This fact cannot be overlooked that no independent witness stayed present during the seizure/recovery of the stolen articles from Saddam's instance.

17. Therefore the standalone evidence of the I.O. and another police official on seizure cannot be considered either definitive or persuasive; the recoveries made before them under Section 27 of the Evidence Act must, therefore, be rejected. The above circumstances build a plausible suspicion in the mind of this Court and likelihoods of false implication cannot be ruled out. It's highly unsafe for this Court to uphold the conviction of the accused Saddam Hussain.

18. Upshot to the above, the appeal succeeds. The impugned judgment dated 28.02.2023 passed by learned Additional Sessions Judge No.3, Ajmer in Criminal Appeal No.05/2021 (CIS No.50/21) affirming the judgment of conviction and order of sentence dated 02.02.2021 passed by learned Additional Chief Judicial Magistrate No.1, Ajmer in Criminal Case No.6036/2018 are set aside. The accused-appellant is hereby acquitted from the charges under Section 379 of the Indian Penal Code. The petitioner is in custody. He shall be released from prison forthwith, if not wanted in any other case.

19. All pending applications stand disposed off.

20. Record be sent back forthwith.

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