

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 201 OF 2011

STATE OF MADHYA PRADESH

Appellant(s)

Versus

ARIF KHA

Respondent(s)

WITH

CRIMINAL APPEAL NOS. 591 OF 2011, 593 OF 2011, 592 OF 2011 AND 590 OF 2011

O R D E R

These appeals by special leave are directed against the judgment and order dated 27.02.2009 passed by the High Court of Madhya Pradesh, Bench at Indore whereby the said Court has allowed the criminal appeals filed by the convicts in Sessions Trial No. 204 of 2000 wherein 2nd Additional Sessions Judge (Fast Track), Shajapur had convicted them under Sections 396, 450 and 458, Indian Penal Code and sentenced them to various terms of punishment including life imprisonment and fine under Section 396, IPC.

The prosecution case in brief is that in the intervening night of 6th and 7th August, 2000 some miscreants entered in the house of complainant Dhankunwarbai (not examined) by lurking and house trespass. The miscreants while committing robbery assaulted Bhojraj Patel (deceased) and looted the jewellery kept in iron-safe. In the incident, Kasturbai (PW-1) was also allegedly

assaulted. The First Information report (Exp./44) was got registered by Dhankunwarbai at the police station Kalapipal being Crime No. 164/2000. During investigation, the jewellery was recovered from the accused persons and Test Identification Parade was held on 22.03.2001. On conclusion of the investigation, charge-sheet was filed by the Investigation Officer against seven accused persons namely Murli, Om Prakash, Shahbuddin, Mukesh, Udham Singh, Lakhan Singh and Hemant Singh and a supplementary charge-sheet was filed against three more accused persons namely Aarif Khan, Manohar and Jumma Khan.

After the conclusion of the trial, the trial court acquitted Shahbuddin and convicted rest of the accused persons and sentenced them to various terms of punishment mentioned in Annexure P-1 (copy of the trial court judgment).

Aggrieved by the judgment and order dated 28.01.2004 passed by 2nd Additional Sessions Judge (Fast Track), Shajapur in Sessions Trial No. 204 of 2000, the convicts preferred Criminal Appeal Nos. 210/2004, 238/2004, 247/2004, 616/2004, 402/2004, 498/2004 and 289/2004 which were disposed of by the High Court by a common order whereby the said appeals were allowed and the accused were acquitted. Hence, these appeals through special leave filed by the State of Madhya Pradesh.

We have heard learned counsel for the parties at length and perused the material placed on record.

The High Court has taken note of the fact that the complainant and alleged injured eye-witness Dhankunwarbai was not examined by the prosecution. The High Court has further taken note of the fact

that though witnesses Hemlatabai and Sangitabai identified the looted ornaments alleged to have been recovered at the instance of the accused but the ornaments so recovered do not find any mention in the first information report. The High Court has further observed that though Kasturbai (PW-1) has identified accused persons in the Test Identification Parade but she could not identify the accused in the Court except the two.

On behalf of the State, an attempt has been made to show that the complainant and injured eye-witness Dhankunwarbai had lost mental balance as such, she could not be examined but there is no medical evidence to corroborate the said fact.

Secondly, learned counsel for the appellant-State submitted that recovery of ornaments were made at the instance of the accused and identified by the witnesses Hemlatabai and Sangitabai as such the recovery should not have been disbelieved by the High Court. However, in our opinion, the High Court correctly appreciated the evidence and since there was no mention in the first information report or any document annexed with it or in the 161 statement of the witnesses as to the details of the ornaments looted as such, the alleged recovered articles cannot be said to have been linked with the articles looted in the incident.

So far as the identification of the accused is concerned, it is true that even if the Test Identification Parade is not held and accused persons are identified by the eye-witness in the court, the conviction could still be based on such identification. But in a case where witness is stated to have identified, the accused in the Test Identification Parade fails to identify them in the court, it

cannot be said beyond reasonable doubt that such an accused was the person who had participated in the robbery unless there are serious reasons for recording such finding.

For the reasons as discussed above, we are not inclined to interfere with the impugned order passed by the High Court. It is significant to note that the accused persons have already undergone more than eight years of incarceration before they were acquitted by the High Court.

The appeals are accordingly dismissed.

.....J.
(N.V.RAMANA)

.....J.
(PRAFULLA C.PANT)

New Delhi,
Dated: 22nd August, 2017.

ITEM NO.102

COURT NO.10

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 201/2011

THE STATE OF MADHYA PRADESH

Appellant(s)

VERSUS

ARIF KHA

Respondent(s)

WITH

Crl.A. No. 591/2011 (II-A)

Crl.A. No. 593/2011 (II-A)

Crl.A. No. 592/2011 (II-A)

Crl.A. No. 590/2011 (II-A)

Date : 22-08-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Ms. Bansuri Swaraj, Adv.
Mr. C. D. Singh, AOR
Ms. Sakshi Kakkar, Adv.
Mr. Gaurav Shukla, Adv.
Mr. Usman, Adv.

For Respondent(s) Mr. N.K.Mody, Sr. Adv.
Mr. Ankur Mondy, Adv.
Mr. Rohan Jain, Adv.
Ms. Sidhi Padia, Adv.
Mr. Siddharth Singla, AOR

Mr. Sushil Kumar Jain, Sr. Adv.
Ms. Christi Jain, Adv.
Mr. Abhinav Gupta, Adv.
Mr. Harsh Jain, Adv.
Ms. Pratibha Jain, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)

AR CUM PS

(Signed order is placed on the file)

(S. SIVARAMAKRISHNA)

ASST.REGISTRAR