

Sulekh Chand

Vs

Suresh Chand and Others

Criminal Appeal No. 546 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

06.11.1990

JUDGMENT

1. The appellant who is the complainant in 'this criminal proceeding has filed this appeal on being aggrieved by the common judgment made in Criminal Revisions Nos. 1210, 1428 and 1474 of 1976 on the file of the High Court of Allahabad. The brief facts which have given rise to this appeal are as follows:

On the intervening night of 25/26th February, 1968 there was a burglary in the house of the complainant in respect of which he laid a report before the police as against respondents 1 and 2 and two other accused who died during the pendency of the trial. The Investigating Officer was able to recover some of the items of the properties from the houses of respondents 1 & 2 on 24-3-1968. After completing the investigation, he filed the charge-sheet. The trial Court found respondents 1 & 2 guilty of the offence punishable under Section 411, I.P.C. in respect of Exhibits 1 & 3 and sentenced each of them to undergo rigorous imprisonment for a period of two years. Coming to the disposal of the property, the trial Court directed Exhs. 1 & 3 to be returned to the complainant and left the parties to go to the Civil Court to lay their claim in respect of the other items of properties. Respondents 1 & 2 preferred Criminal Appeals Nos. 222 and 227 of 1975 before the Additional Sessions Judge, Muzaffarnagar. The complainant also preferred Criminal Appeal No. 243/75 questioning the jurisdiction of the Magistrate in directing the parties to approach the Civil Court to lay their respective claims in respect of other items of properties other than Exhibits 1 & 3. The learned Sessions Judge dismissed the two appeals preferred by the respondents 1 and 2 but modified the sentence of imprisonment to one of fine and allowed the Criminal Appeal preferred by the complainant and modified the order of the Magistrate in respect of the properties other than Exhs. 1 and 3 to the effect that all other items of properties except Exhs. 1 and 3 should be delivered to the Chief Judicial Magistrate, Muzaffarnagar for disposal according to law, thereby setting aside the order of the Magistrate directing the parties to go to the Civil Court. As against the judgment of the Appellate Court, respondents 1 and 2 preferred Criminal Revisions Nos. 1210, 1428 of 1976 whereas the complainant filed Criminal Revision No. 1474 of 1976 for enhancement of sentence.

2. Before the High Court, it was contended that PWs 1, 4, 5 & 7 had already seen the Gold Chain & Tagri (Exhs. 1 & 3) before they were put for identification on 2-7-1968 and, therefore, the fact that

the said witnesses identified the two articles at the test identification was of no consequence and, therefore, the mere fact that they identified those two articles in Court when they were not mixed up with other similar articles could not be safely relied upon to record the conviction of respondents 1 and 2 under Section 411, I.P.C. The High Court has mainly considered only the discrepancy that has crept in with regard to the dates of identification of these two articles and concluded "a perusal thereof showed that the property was not put for identification on 14-6-68 because it had grown too late." On this finding, the High Court concluded that the statements made by the identifying witnesses before the trial Court could not be given much weight and, therefore, it could not be held that Exhs. 1 & 3 had been stolen from the complainant's house on the intervening night of 25/26-2-1968. Consequent upon the above finding, the High Court set aside the conviction of respondents 1 & 2 under Section 411, I.P.C. and directed Exhs. 1 & 3 to be restored to respondents 1 and 2 respectively on the ground that these two items of properties were recovered from their houses. The revision for enhancement of sentence filed by the complainant was dismissed. On the representation made by the counsel for the complainant, the High Court observed. "It is open to the complainant to file a suit for adjudication of his title regarding the gold chain and the gold tagri (Exhs. 1 & 3) and if the aforementioned two articles are delivered back to Satendra and Suresh, they may misappropriate the two articles and this will frustrate his right to get the matter adjudicated by Civil Court. In order, however, to safeguard the interest of the complainant we can direct that the order regarding the disposal of the property will take effect after the expiry of a period of one month from today. It will be open to the complainant to file a suit within this period if he so likes and obtain an interim order from the Court concerned." Feeling aggrieved, the complainant has filed this present appeal.

3. During the hearing of this appeal, both the learned counsel have admitted that the matter in respect of the disposal of the other articles as per the order of the learned Sessions Judge made in Criminal Appeal No. 243 / 75 filed by the complainant is still pending before the Chief Judicial Magistrate, Muzzafarnagar. As pointed out earlier, the High Court has summarily disposed of the revision and directed the properties to be restored to respondents 1 and 2. As we are not satisfied with the reasoning of the High Court with regard to the disposal of the properties (Exhs. 1 and 3) though we are not inclined to interfere with the order of acquittal of the respondents 1 and 2 of the offence under Section 411, I. P.C., we feel that in the interest of justice that the matter relating to the disposal of properties (Exhs. 1 and 3) can be relegated to the C.J.M., Muzzafarnagar before whom the matter relating to the disposal of the other articles as per the order of the learned Sessions Judge is still admittedly pending. In the result, we set aside the order of the High Court directing the delivery of the properties (Exhs. 1 and 3) to and 2, but maintain the order of acquittal passed by the High Court of these two and direct that the properties (Exhs. 1 and 3) shall be sent to the C.J.M., Muzzafarnagar who thereupon will make a thorough enquiry by giving sufficient opportunity to both the parties and pass appropriate orders according to law in respect of the properties (Exhs. 1 and 3) along with other articles, uninfluenced by the findings of any of the Courts with regard to the claim of the properties by the parties concerned. The Chief Judicial Magistrate is directed to expedite the disposal of the properties pending before him.

4. The appeal is disposed of accordingly.

Appeal partly allowed.

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