

SUPREME COURT OF INDIA**Bench : Justices B.R. Gavai and Sandeep Mehta****Date of Decision: April 19, 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2024

(Arising out of SLP (Crl.) No(s). 4626 of 2024)

HANSRAJ ...APPELLANT(S)**VERSUS****STATE OF M.P. ...RESPONDENT(S)****Legislation:**

Sections 394, 397 of the Indian Penal Code, 1860

Section 374(2) of the Code of Criminal Procedure, 1973

Section 27 of the Indian Evidence Act, 1872

Subject:

Criminal appeal against High Court's decision affirming trial court's conviction of the appellant for robbery and causing hurt during robbery, focusing on the evidentiary value of the recovered stolen items and the legality of the alleged disclosure statement by the accused.

Headnotes:

Quashing of Conviction and Acquittal – Criminal Appeal against High Court and Trial Court's decision – Supreme Court acquits appellant convicted of robbery under Section 394 read with Section 397 IPC – No tangible or reliable evidence linking appellant to the crime – Recovery and identification of stolen items not proven to legal standards – Appeal allowed, and convictions quashed. [Paras 1-18]

Role of Accused in Robbery – Examination of evidence – Prosecution fails to prove the appellant's confession and recovery of stolen items – Testimony and evidence regarding recovery and identification of stolen items found legally insufficient – Supreme Court finds that identification of appellant in court and by the complainant lacks credibility due to procedural flaws. [Paras 8-14, 18]

Evidence and Identification – Analysis of legal admissibility – Supreme Court holds that the prosecution did not follow legal requirements in proving the confession or recovery of stolen items – Test identification and seizure of items not corroborated by independent or reliable witness evidence – Identification of stolen items by complainant influenced by police, undermining its validity. [Paras 9-14]

Identification of Accused and Recovery of Stolen Items - Initial non-identification of the assailant by the victim, subsequent flawed identification during trial noted – Prosecution relied solely on the recovery of items post-disclosure statement which was not properly authenticated – Ineffectual cross-examination revealed police led identification of stolen items, undermining credibility [Paras 3-5, 9-10].

Procedural Lapses in Evidence Handling - Investigating Officer failed to narrate contents of disclosure statement properly, nor proved it legally – Items recovered were not shown to be securely handled or authenticated post-recovery [Paras 11-13].

Decision – Acquittal of Accused – Supreme Court sets aside lower court judgments convicting the appellant – Finds that prosecution's evidence is insufficient to sustain conviction – Orders immediate release of appellant if not required in another case. [Paras 15-18]

Referred Cases:

- Ramanand alias Nandlal Bharti v. State of Uttar Pradesh, 2022 SCC OnLine SC 1396 [Para 13].

J U D G M E N T

Mehta, J.

1. Leave granted.
2. This appeal is directed against the judgment dated 21st December, 2022 passed by the learned Single Judge of the Madhya Pradesh High Court Bench at Indore in Criminal Appeal No. 1427 of 1999 whereby, the appeal preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 was dismissed. By way of the said appeal, the appellant had challenged the judgment dated 20th October, 1999 passed by the learned First Additional Sessions Judge, Mandsaur, M.P. in S.T. No. 34 of 1999 whereby, the appellant was convicted for the offences punishable under Sections 394 read with Section 397 of the Indian Penal Code, 1860 (hereinafter being referred to as 'IPC') and sentenced to undergo seven years rigorous imprisonment with a fine of Rs. 1,000/- and, in default of payment of fine, to undergo further rigorous imprisonment of three months.
3. The substratum of the prosecution story is that on 12th December, 1998 at about 10:30 am, while the complainant Bhagu Bai was proceeding to her field, a person came from behind, closed her eyes, assaulted her with a knife and snatched away the silver anklet, a silver necklace and a silver bracelet which were worn by her. After committing the crime and injuring the complainant in the process, the assailant ran away from the spot. The complainant stated in the First Information Report (FIR) that she was not able to see or identify the assailant.
4. Be that as it may, the appellant was arrested on 14th December, 1998 on the basis of suspicion. It is alleged that upon being interrogated by the police, the accused appellant made a confession/disclosure statement which was recorded as Memorandum (Exhibit P-11). It is further stated that acting on the said disclosure statement, the Investigating Officer(PW-12) recovered the silver articles allegedly looted by the accused after assaulting the complainant. These articles were seized vide *panchnama* (Exhibit P-12). The prosecution further claimed that the articles so seized at the instance of the accused were got identified at the hands of the complainant before an Executive Magistrate.

5. Charge sheet was filed against the accused appellant for the above offences and the case was committed to the Sessions Court for trial. The accused was charged and tried for the offences mentioned above.
6. At the conclusion of trial, the trial Court proceeded to convict and sentence the appellant as above. The High Court, affirmed the conviction and sentence of the accused as recorded by the trial Court and rejected the appeal filed by the accused vide judgment dated 21st December, 2022 which is assailed in this appeal.
7. We have given our thoughtful consideration to the submissions advanced by learned counsel for the appellant and learned Deputy Advocate General appearing for the State.
8. The learned trial Court convicted the appellant by recording the following finding: -

“According to the analysis done by above, it is proved that on the information of the accused, the jewellery looted from complainant was seized, which was seized immediately two days after the incident. Therefore, there is no possibility at all that these ornaments could have come into the possession of the accused in any other way. As a result, it is proved that it was the accused who took away these ornaments from the complainant while assaulting her and robbed of.”
9. It is relevant to mention here that the complainant Bhagu Bai (PW-3) during the course of sworn testimony tried to improve upon her case by identifying the accused in the Court, but the fact remains that such evidence of identification of the accused was not relied upon by the learned trial Court and the High Court and the case was found proved only on the basis of recovery of ornaments.
10. The complainant Bhagu Bai (PW-3) claimed to have identified the ornaments recovered at the instance of the accused in test identification proceedings. However, in crossexamination, she candidly admitted that the police officers had identified her jewellery and thereupon, she recognized it. Relevant extract from the cross-examination of Bhagu Bai (PW-3) is reproduced hereinbelow:
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“At the time of identifying my jewelry in Mandsaur, there were two police officers. The police officers had identified our jewelry, and I had recognized it. Our jewelry did not have a paper note; it was wrapped in cloth. The other jewelry was also placed on top of the cloth. The police

officers had called me for identification. I came with my husband and the police officers. I don't know if my jewelry was with the police at the time of identification or not. I don't know where they came from during the identification.

I did not mention the clip snatched in my report because I was not paying attention. At the time of identification, the police pointed it out; I had not mentioned it before. I later said that I informed the police at the hospital. It was recorded after writing the report.”

11. It is also important to note that the Investigating Officer (PW-12) who recorded the disclosure statement of the accused and effected the recovery did not prove the disclosure memo as required by law. The relevant part from the evidence of the Investigating Officer (PW-12) is reproduced hereinbelow for the sake of convenience: -

“ I arrested the accused Hansraj and prepared the arrest memo, marked as 'Exh P9'. My signature is on the memo, marked as 'CC' to 'CC.' I interrogated the accused Hansraj, and he confessed to hiding the stolen jewelry near the Tummad River in Gram Jhirkan as per his statement. I prepared a memo of this confession, which was marked as 'Exh. P10'. My signature is on the memo, marked as 'CC to 'CC.' After that, I took accused with me to Beed, where the accused had recovered silver plates, earrings, a ring, and a silver chain from the ground near his hut and handed them over. The accused also retrieved a piece of glass from a bottle and handed it over. I prepared a s seizure memo for these items, marked as 'Exh. P12.' My signature is on the memo, marked as 'CC' to 'CC.'

I also seized the jewelry before the accused's arrest and prepared a memo, marked as 'Exh P11.'”

12. A bare perusal of the extracted portion of the deposition of the Investigating Officer would reveal that he did not narrate the exact words spoken by the accused at the time of making the disclosure statement. He also did not state that the accused led him to the place where the articles were hidden and rather stated that he took the accused to the Beed and got recovered the silver ornaments.

13. This Court in the case of ***Ramanand alias Nandlal Bharti v. State of Uttar Pradesh*** has postulated that for proving a disclosure memo recorded under Section 27 of the Indian Evidence Act, 1872 at the instance of the accused, the Investigating Officer would be required to state about the contents of the disclosure memo and in absence thereof, the disclosure memo and the discovery of facts made in pursuance thereto would not be considered as admissible for want of proper proof.
14. As a consequence of the above discussion, we have no hesitation in holding that the prosecution miserably failed to prove the factum of disclosure made by the accused to the Investigating Officer (PW-12) leading to the recovery of the silver articles allegedly looted by the accused from the complainant. It is also important to note that the prosecution did not lead any evidence to show that the recovered articles were sealed at the time of recovery or that they were kept secure in the malkhana of the Police Station till the same were subjected to identification before the Executive Magistrate. In addition thereto, it is also relevant that the Executive Magistrate was not examined in evidence. The complainant Bhagu Bai (PW-3) made a categorical admission in her cross examination that she could recognize the silver articles in the test identification proceedings upon being pointed out by the police officials. Thus, the recovery of the ornaments at the instance of the accused and the identification thereof has no sanctity in the eyes of law and cannot be relied upon. No other evidence was led by the prosecution to connect the accused appellant with the crime.
15. Consequently, there is no tangible or reliable evidence available on the record so as to affirm the guilt of the accused appellant as recorded by the learned trial Court and upheld by the High Court.
16. As a result, the appeal deserves to be and is hereby allowed. The impugned judgments dated 20th October, 1999 and 21st December, 2022 passed by the learned trial Court and the High Court respectively are hereby quashed and set aside.
17. The accused appellant is acquitted of the charges. He is in jail and shall be released from custody forthwith, if not wanted in any other case.
18. Pending application(s), if any, stand(s) disposed of.

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