

IN THE COURT OF MS. CHARU AGGARWAL
ADDITIONAL SESSION JUDGE-02: CENTRAL DISTRICT
TIS HAZARI COURT: DELHI.

CA No. 493/2019
FIR No. 285/18
PS: Sarai Rohilla
U/s: 457/380/411 IPC

Bandhu Singh
S/o Late Sh. Shankar Lal
R/o Jhuggie No. 17/18, Chetan Basti,
Anand Parbat, Delhi

.....Appellant

Vs.

State

.....Respondent

Date of institution : 23.12.2019
Date of decision : 15.05.2020

JUDGMENT

1. The present appeal u/s 374 Cr.PC alongwith an application u/s 5 of Limitation Act has been preferred by an appellant (accused before Ld. Trial Court) challenging the order of conviction dated 04.10.2019, whereby he was convicted for committing the offence u/s 411 IPC and order on sentence dated 23.10.2019, whereby he was sentenced to undergo Rigorous Imprisonment (RI) for 3 years and to pay fine of Rs. 10,000/- failing which RI for 6 months, passed by Ld. MM-4, Central District, Tis Hazari Court Delhi.

2. The facts emerging from the trial court record are that in the present case the criminal machinery was put into motion on receipt of DD No.



19A dated 28.07.2018, at about 10:23 AM, at PS Sarai Rohilla, Delhi, regarding theft in the factory situated at 17/15, Anand Parbat, Industrial Area near Daya Basti, Delhi, belonging to complainant Jagdish Kumar. On receipt of said DD, Ct. Sunil alongwith ASI Karamvir reached at the spot i.e. 17/15, Anand Parbat, Industrial Area near Daya Basti, Delhi, where they met complainant. ASI Karamvir recorded the statement of the complainant to the effect that he is resident of WZ-137, Shadipur, Mandirwali Gali, West Patel Nagar, Delhi and run his factory from the aforesaid address of Anand Parbat, Delhi. He has stated that on 27.07.2018, at about 09:00 PM, one of his employee Vidyanand locked the factory and took the keys with him. On the next day i.e. 28.07.2018, at about 09:00 AM, complainant's three employees Vidyanand, Manoj and Geeta came to the factory and found the locks of the shutter of the factory were broken and shutter was half opened. One of the employee of the complainant clicked the photographs of the shutter of the factory and put those photographs on the whatsapp group. The said information was also given by one of the employee to the complainant's son and daughter in law. Complainant's daughter-in-law further passed the information to the complainant. Thereafter, complainant alongwith his daughter in law reached at the factory. In the meantime, complainant's employee Geeta had made a call at 100 number. PCR Van and Crime Team reached at the spot. On checking the factory from inside, the complainant found that the goods of the factory were lying scattered and lock of the table was also broken from which Rs. 60,000/- in cash, cheque book of HDFC Bank of the complainant, his Aadhar Card, two laptops one make of Lenovo and another of Dell company and one LED TV were missing. CCTV was installed at the factory footage of which was handed over by the complainant to the police. On the basis of aforesaid statement of the complainant, the FIR of this case u/s 457/380/411 IPC was registered. The investigation was carried out



by the IO ASI Karamvir.

3. During investigation, on 29.07.2018, IO alongwith Ct. Krishan Kumar and complainant went to Anand Parbat Industrial Area in search of wrong doer. The secret informer gave them the information that the person who is shown in the CCTV Footage provided by the complainant to the police resides at Chetan Basti, Anand Parbat, Delhi, and he can be apprehended if raid is conducted at his residence. ASI Karamvir alongwith Ct. Krishan Kumar conducted the raid at the house of accused and asked 4-5 public persons to join the raid, however, they refused to join the same. ASI Karamvir alongwith Ct. Krishan Kumar reached at the jhuggie No. 17/18, Chetan Basti, Anand Parbat, Delhi, of the accused where he was already standing outside towards whom the secret informer pointed out as the same person who committed the theft in the factory of the complainant. On the pointing out of the secret informer, IO went to the accused to conduct further investigation, however, the accused tried to flee away from the spot but he was apprehended by the IO and Ct. Krishan Kumar who revealed his name as Bandhu Singh. Discloser statement of the accused was recorded in which he made the disclosure that he has committed the theft in the complainant's factory. On the search of the jhuggie of accused, he got recovered two laptops one make of Lenovo and another of Dell company, LED TV, HDFC Bank Cheque book and Aadhar Card of the complainant. Rs. 5000/- were also recovered from the jhuggie of the accused. All the recovered articles were seized by the IO ASI Karamvir. Formalities of arrest of accused were completed.

4. After completion of investigation, chargesheet was filed by the IO before the concerned Ld. MM. Accused was summoned. Vide order dated 23.10.2018, Ld. MM framed the charge u/s 380/411/457 IPC against the accused to which he pleaded not guilty and claimed trial.



5. In order to prove its case, the prosecution has examined total 7 witnesses before the Ld. Trial Court.

6. PW-1 is complainant himself i.e. Sh. Jagdish Kumar, who has stated that his son Rakesh used to run the factory from the property bearing no. 17/15, Anand Parbat. On 27.07.2018, at about 08:00 PM, one of the worker namely Vidyanand locked the factory. On 28.07.2018, at about 09:00 AM, three employees of the factory namely Vidyanand, Geeta and Manoj reached there and found that the locks of the shutter were broken and shutter was half opened. The information of theft in the factory was given by the employees to the son of the complainant who was out of Delhi at that time. Complainant's son gave the said information at his house. Complainant alongwith his daughter in law Pooja reached at the factory. In the meantime, one of the employee Geeta had already made a call at 100 number. The complainant went inside the factory and found the goods of the factory were lying here and there. CCTV Camera was installed in the factory. On further search, the complainant came to know that two laptops one make of Lenovo and another of Dell, one LED TV, his Aadhar Card, HDFC Bank cheque book a and Rs. 60,000/- were missing. PW-1 has further stated that on checking the CCTV Footage the face of the accused was clearly revealed. He gave his complaint Ex. PW-1/A to the police. IO prepared the site plan Ex. PW-1/B. He has further stated that on 29.07.2018, he went to Police Station (PS) Sarai Rohilla from there he alongwith IO and one Constable went to the Jhuggie of accused. On the information of the secret informer, the case property i.e. two laptops, one LED TV, cheque book of HDFC Bank, Aadhar Card and Rs. 5000/- were recovered from the jhuggie of the accused. Accused was arrested in the presence of PW-1 vide arrest memo Ex. PW-1/E. Personal search of accused was conducted vide memo Ex. PW-1/F. Disclosure statement of accused was recorded which is Ex. PW-1/G. PW-1 has also stated that CCTV

was installed in his factory. The relevant CCTV Footage was given by him to the police in which the face of the accused was clearly seen while committing theft. He also provided CD of the CCTV Footage to the IO. PW-1 has correctly identified the photographs of the case property shown to him during his chief examination.

7. **PW-2** is Ct. Sunil Kumar, who was posted as Duty Officer on 28.07.2018 at PS Sarai Rohilla. On that day, DD No. 19-A was received by him. He alongwith ASI Karamvir reached at the spot and saw that the lock of the shutter of the factory were broken. He has stated that IO called the Crime Team at the spot. He has further stated that IO has recorded the statement of PW-1 complainant on the basis of which rukka was prepared and FIR of this case was registered.

8. **PW-3** is Geeta, employee of the complainant. She has stated that on 27-28/07.2018, she alongwith other staff of the factory remained there till 08:00 PM, thereafter, the factory was closed by the employees. On the next date, at about 08/09:00 AM, she alongwith other labours of the factory reached there and saw that the locks of the factory were broken and articles of the factory were scattered. Laptops and computer system were found to be missing from the factory. She clicked some photographs and sent the same to the whatsapp group of the factory employee. She also made a call at 100 number. Police reached at the spot and recorded the statement of the complainant.

9. **PW-4** is Duty Officer ASI Harpal, who has proved the registration of FIR as Ex. PW-4/A and rukka Ex. PW-4/B.

10. **PW-5** is Vidyanand, another employee of the complainant. He has stated that on 27.07.2018, at about 09:00 PM, he alongwith other workers namely Geeta and Manoj locked the factory and on the next day i.e. 28.07.2018, at about 09/09:30 AM, he reached at the factory and found the lock of the

shutter of the factory was broken and it was half opened. In the meantime, other workers of the factory also reached there. One of the lady employee Geeta gave the information about the incident to the complainant and made a call at 100 number. The police reached at the spot and recorded the statement of PW-1 complainant and this PW.

11. PW-6 is HC Krishan Kumar, who has stated that on 29.07.2018, IO called the complainant for the investigation of the case. This PW alongwith complainant and IO went to Anand Parbat Industrial Area where they met secret informer. The secret informer gave the information to the IO that the accused who has stolen the articles from the factory of the complainant can be apprehended with stolen articles if raided. On receipt of the secret information, IO requested several public persons to join the investigation but all refused for the same. The secret informer pointed out towards the accused and told that he is the same person who committed theft in the factory. IO tried to interrogate the said person, however, he tried to flee away but this PW and IO apprehended him. Thereafter, IO interrogated the accused in which he gave his disclosure statement and admitted committing of offence. Thereafter, he (accused) took the IO, this PW and complainant to his house i.e. J-17/18, Chetan Basti, Anand Parbat, Delhi and got recovered one LED TV, two laptops, Aadhar Card, HDFC Bank cheque book and also sum of Rs. 5000/- in cash. The complainant identified all those articles as belonging to him. IO seized all the recovered articles vide seizure memo Ex. PW-1/C and Ex. PW-1/D. The formalities of arrest of accused were completed by the IO.

12. PW-7 is IO ASI Karamvir, who has stated that on 28.07.2018, on receipt of DD No. 19-A regarding theft, he alongwith Ct. Sunil reached at the spot where they met complaint Jagdish. IO recorded the statement of the complainant. He called the Crime Team at the spot. He also saw CCTV Footage.

On the basis of statement of the complainant, rukka was prepared and FIR was got registered. IO prepared the site plan. CCTV Footage is stated to be shown to the public persons and they were requested to give information regarding the accused. On 29.07.2018, during investigation, IO alongwith Ct. Krishan reached at the Industrial Area, Anand Parbat, where they met complainant. During investigation, secret informer gave the information to him that the accused who was found in the CCTV Footage is resident of Jhuggie no. 17/18, Chetan Basti, Anand Parbat, Delhi. IO requested several public persons to join the investigation but all refused to join the same. This PW alongwith Ct. Krishan and complainant reached at the jhuggie of the accused and apprehended him. Accused got recovered two laptops, one LED TV, Aadhar Card, HDFC Bank cheque book and sum of Rs. 5000/- in cash. Thereafter, this PW completed the formalities of arrest of accused and seizure of case property.

All the PWs were cross examined by Sh. Deepak Kumar, Ld. Legal Aid Counsel before the Ld. Trial Court.

13. After completion of prosecution evidence, statement u/s 313 readwith 281 Cr.PC of the accused was recorded in which he pleaded his innocence and stated that he has been falsely implicated in this case.

14. After hearing Ld. APP & Ld. Defence Counsel and considering the material on record, the Ld. Trial Court convicted the appellant/accused only for the offence u/s 411 IPC and acquitted him for the other two offences u/s 380/457 IPC for which charge was framed against him and also passed order on sentence as already mentioned in para no. 1 of this order.

15. I have heard Ld. APP and Sh. Hari Dutt Sharma, Ld. LAC for appellant/accused.

16. In the application u/s 5 of Limitation Act, the appellant has stated that there is delay of 30 days in filing the appeal since the appeal has been



preferred through DLSA, therefore, the procedure in appointment of counsel for the appellant by DLSA took time, hence, the appeal was belatedly filed. In view of this the appellant/accused has prayed for condonation of delay in filing the appeal.

17. In view of the averments made in the application u/s 5 of Limitation Act, the court is satisfied that appellant/accused has shown sufficient cause in belatedly filing the appeal, hence, the application u/s 5 of Limitation Act filed by appellant is hereby allowed, consequently the delay in filing the appeal is hereby condoned.

18. On merits, the appellant has challenged the judgment of Ld. Trial Court on the ground that Ld. Trial Court has not properly appreciated the evidence. Ld. Counsel for appellant has argued that PW-1 during his chief examination has stated that his younger son Rakesh used to run the factory but the prosecution has not examined Sh. Rakesh to prove the ownership of the factory. It is also argued that all the prosecution witnesses during their cross examination have categorically deposed that that public persons were present on 28.07.2018 at 09:00 AM when the police visited the factory on receipt of DD No. 19-A and also at the time when the alleged recovery took place from the jhuggie of the accused but despite presence of public persons the IO has not recorded the statement of even a single public witness which creates serious doubt on the case of the prosecution.

19. The only arguments advanced by Ld. LAC before this court is that despite admitted presence of public persons at the spot at the time of first visit of police at the factory of the complainant and also at the time of alleged recovery from the house of accused, the IO has not recorded the statement of even a single public witness. This argument of Ld. LAC has no substance since it is settled law that the statement of the victim of the crime/complainant is



sufficient to record the conviction of the accused if the said statement/deposition of the victim is found cogent, consistent and reliable.

20. There is no legal impediment in convicting a person on the sole testimony of a single witness. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence than on quantity, multiplicity or plurality of witnesses. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

21. In the present case, the most material witnesses of the prosecution are PW-3 Geeta and PW-5 Vidyanand since both these witnesses have deposed regarding closure/locking of the factory on the night of 27.07.2018 and also first time saw the broken locks of the factory and its half opened shutter in the morning of 28.07.2018. Both these witnesses have categorically deposed in their chief examination that on 27.07.2018 in the night, they locked the factory of the complainant and on the next morning i.e. 28.07.2018 at about 09:00 AM when they reached at the factory, they found the lock of the shutter of the factory was broken and shutter was half opened. There is nothing in the deposition of both these PWs creating doubt on their testimony either in whole or on the particular fact that the factory was locked by them on the previous night of the day of incident and on the fact of breaking open the lock of the shutter of the factory in the morning of 28.07.2018. PW-1 complainant is also the relevant witness of the prosecution since he is the witness on the fact that the goods recovered from the possession of accused were belonging to him. This PW categorically deposed in his evidence that on checking the factory, he found that two laptops make of Lenovo and Dell, one LED TV, his Aadhar card, HDFC Bank cheque book and cash of Rs. 60,000/- were missing. Again there is nothing in the testimony of this PW creating iota of doubt on his statement that the theft took place in his

factory and the aforementioned goods were stolen in the said theft. The co-joint reading of testimony of PW-1, PW-3 and PW-5 clearly prove that the theft was committed at the factory of the complainant situated at 17/15, Anand Parbat, Industrial Area near Daya Basti, Delhi, in which the aforementioned goods were stolen.

22. So far as, the recovery of the stolen articles belonging to PW-1 complainant is concerned, PW-1, PW-6 and PW-7 have testified in their respective evidence that on 29.07.2018, they went for the further investigation of the case at Anand Parbat Industrial Area where one secret informer met them and gave the information to the IO that the wrong doer who had committed theft in the factory of the complainant can be apprehended from his house situated at Jhuggie No. 17/18, Chetan Basti, Anand Parbat, Delhi. These PWs have further stated that on receipt of secret information they all went at jhuggie of the accused and on seeing the police, he tried to flee away but apprehended by the police officials. He got recovered two laptops, one LED TV, Aadhar Card, HDFC Bank cheque book and Rs. 5000/- in cash from his jhuggie. There is nothing in the deposition of these PWs which may dent the case of the prosecution on the fact of recovery of stolen articles from the possession of the accused. Otherwise also, there is presumption u/s 114 (a) of Evidence Act against the accused that if soon after the theft he could not account for the stolen articles recovered from his possession, he is presumed to be thief. In view of the aforesaid discussion, the prosecution has proved that the stolen articles of the complainant were recovered from the possession of the accused soon after the theft or which he could not account for, hence, he was rightly convicted by the Ld. Trial Court for the offence u/s 411 IPC.

23. As far as the order of sentence passed by Ld. MM is concerned, to the mind of this court, Ld. MM has taken a very harsh view in sentencing the

appellant since appellant as per record is a senior citizen of 65 years old, though he is involved in several other cases of similar nature but taking into account his old age, this court deem it appropriate to give him one more chance to reform himself, hence, the order of sentence passed by Ld. MM is hereby modified to the extent that appellant is sentenced for the period already undergone by him. (He was in custody from 29.07.2018 till date). The fine imposed by Ld. MM is hereby set aside.

24. **Appellant be released forthwith, if not required in any other case.** The present order has been communicated to Sh. Hari Dutt Sharma, Ld. LAC and to appellant/accused through Video Conferencing.


Copy of this order be immediately sent to the concerned Jail Superintendent for compliance and to the Prosecution Branch.

The present appeal is hereby disposed off.

Trial Court record be sent back to the concerned court after re-opening of the court after lockdown.

Appeal file be consigned to record room.

Announced in the open court
on 15th May, 2020


(Charu Aggarwal)
ASJ-02/Central/THC/Delhi

Copy Received
15/5/20
Ch. ROHIT