# IN THE HIGH COURT OF MADHYA PRADESH

# AT INDORE

*BEFORE*

**HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**CRIMINAL APPEAL No. 6014 of 2017**

**BETWEEN:-**

**SHIVNARAYAN S/O GANPAT MALVIYA, AGED ABOUT 35 YEARS, OCCUPATION: CYCLE SHOP CHABLA REHWARI THANA GHATTIYA (MADHYA PRADESH)**

**.....APPELLANT**

*(BY SHRI MANOJ KUAMR VYAS, ADVOCATE)*

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THR.PS. JEEVAJIGANJ UJJAIN (MADHYA PRADESH)**

**.....RESPONDENT**

*(BY SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE)*

**CRIMINAL APPEAL No. 1190 of 2018**

**BETWEEN:-**

**AJAY @ KAMAL S/O RAMAJI MALVIYA, AGED ABOUT 25 YEARS, OCCUPATION: LABOUR GURJAR BAPCHA BALAI MOHALLA DEWAS DISTRICT DEWAS/ KALYAN MIL KULKARNI KA BHATTA, NEAR GOVT. SCHOOL INDORE (MADHYA PRADESH)**

**.....APPELLANT**

*(BY SHRI MANOJ KUAMR VYAS, ADVOCATE)*

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THR.PS. JIVAJIGANJ UJJAIN (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE)***

## CRIMINAL APPEAL No. 8187 of 2019

**BETWEEN:-**

**AJAY @ KAMAL S/O RAMAJI MALVIYA, AGED ABOUT 25 YEARS, KALYAN MIL KULKARNI KA BHATTA THANA PARDESHIPURA INDORE (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI MANOJ KUAMR VYAS, ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THR.PS. CHIMANGANJ MANDI UJJAIN (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE))***

***Reserved on : 13.09.2023***

***Delivered on : 12 .10.2023***

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*These appeals coming on for orders this day, heard with the consent of parties and the court passed the following:*

## JUDGMENT

The Criminal Appeal Nos. 6014/2017 and 1190/2018 have been filed by the appellants Shivnarayan and Ajay respectively, under Sections 374 of the Code of Criminal Procedure (hereinafter

referred as CrPC) being crestfallen by the judgment dated 08.12.2017, passed by the learned Second Additional Sessions Judge, District-Ujjain, in Sessions Trial No.324/2017, whereby the appellants namely Shivnarayan and Ajay @ Kamal have been convicted for offence under Sections 392/34 of Indian Penal Code ( hereinafter referred as IPC) and sentenced to undergo 5 years R.I. each with fine of Rs.5,000/- each with default stipulations. Further, appellant Ajay @ Kamal had also filed Criminal Appeal No. 8187/2019 being disgruntled by the order dated 05.07.2018, passed by the learned First Additional Sessions Judge, in ST No. 317/2017, District-Ujjain, whereby the appellant has been convicted for the offence under Section 392 of IPC and sentenced for 4 years R.I. with fine of Rs.5,000/- and default stipulations.

2.Looking to the circumstance and nature of offence and also the contentions raised on the point of punishment, all of these three appeals are being adjudicated simultaneously.

3.The appellants of criminal appeal Nos.6014/2017 and 1190/2018 have preferred the appeals on the grounds that the prosecution witnesses are not reliable as they narrated the story of incident with embellishment. The complaint was lodged against the unknown persons but due to other reasons, the appellants have been falsely implicated. Seizure witnesses have not supported the case of prosecution. The accused persons were not properly identified by the complainants, inspite of that, learned Sessions Judge convicted the appellants. Learned counsel for the appellants have also alternatively pleaded that the appellant Shiv Narayan has suffered punishment of more than 1 year while Ajay has also

suffered jail sentence of long period. Thus, this appellate Court should take lenient view on the point of punishment, in light of the factual matrix of the case.

4.Likewise, in appeal no. 8187/2019, learned counsel for the appellant, impugning the finding of learned trial Court, submits that the learned trial Court has convicted the appellant only on the basis of suspicion and without any substantive evidence. The appellant has not been properly identified nor the seized property was identified by the complainant properly, hence, the finding of the conviction of appellant is not in accordance with law. That apart, the punishment is also harsher. It is also contended that the appellant has been convicted in two sessions case on different dates, therefore, he prays that sentence of the appellant should be awarded concurrently. Virtually, during the course of arguments, learned counsel for Ajay mainly pressed the arguments on the point of sentence and prays that since the appellant Ajay @ Kamal has already undergone approximately 6 years of jail incarceration and completed his jail sentence, but he could not be released from the jail because in Sessions Trial No. 324/2017 judgment was delivered on 08.12.2017 and in Sessions Trial No.317/2017, the judgment was delivered by the learned trial court on 05.07.2018. The appellant is in jail since 28.03.2017 and could not be released because he is undergoing his sentence in both the appeals separately. Therefore, counsel appearing on behalf of Ajay @ Kamal prayed that if the appeal filed on behalf of the Ajay @ Kamal may be disposed off with a direction that the sentence of both the conviction shall run concurrently then the appellant would be released automatically. It is further prayed that in the interest of

justice, prayer may be allowed and the authority concerned may be directed to release the appellant Ajay @ Kamal immediately.

5.Learned counsel for the State on the other hand borne out the findings of the impugned judgment and submitted that since the offences are heinous, therefore, no leniency should be adopted in the matter.

6.Having considered the rival submissions and on perusal of the record, the point for consideration is as to whether the finding of conviction and sentencing of the appellants in respective sessions trials is incorrect in the eyes of law and facts?

7.First of all, the contentions raised in the appeal Nos.6014/2017 and 1190/2018 filed against the judgment passed in Sessions Trial No.324/2017 is being examined. In the aforesaid case, the prosecution has adduced as many as seven witnesses namely Pushpa (PW-1), Veena Agrawal (PW-2), Nisha (PW-3), Rohit Patel (PW-4), Monu (PW-5), Aman (PW-6) and Devendra Singh Kachhwah (PW-7). So far as the defence is concerned no defence witness has been examined.

8.In this case Pushpa (PW-1) is the actual victim, she has clearly stated that a person suddenly came and snatched her golden chain and he has ran away with the broken chain. In the meantime, second person came in white scooter and then both fled away. This witness has also identified both the accused persons in the Court. This witness has also deposed regarding lodging of FIR and carrying out of spot map.

9.Witness Veena Agrawal(PW-2) is a hearsay witness as she was not present at the place of incident. However, since her

mother-in-law Pushpa (PW-2) has told the entire incident to her, the statement of this witness will be relevant under the provisions of Section 8 of Evidence Act. Witness Nisha (PW-3) has also supported the case of prosecution by stating that she has seen that the accused Shivnarayan was running and also Pushpa was chasing him**.** The testimony of this witness is also relevant under Section 8 of the Evidence Act.

10.The testimonies of aforesaid all three witnesses have not been shaken in their cross-examination and they have stuck with their examination-in-chief. Certainly, Monu (PW-5) and Aman (PW-6) have not supported the seizure and memorandum statements but only because of this, the testimonies of police officers cannot be disbelieved. Virtually, the Investigating Officer Rohit Patel (PW-4) has explicitly supported the seizure and memorandum statements . On this aspect, it is by now well settled that the testimony of police witnesses regarding disclosure statement and seizure memo could not be discarded merely on account that independent witnesses have not supported the seizure and memorandum statement disclosed by accused to the Investigating Officer. In this regard the following ratio decidendi laid down by Hon'ble Supreme Court rendered in ***Karamjit Singh v. State (Delhi Administration), AIR 2003 SC 1311***, is propitious to produce here:-

> *"**8.....**.The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony can not be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as*

> *of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds....."*

11. In a recent full bench decision of Hon'ble Apex Court rendered in **Rizwan Khan v. State of Chhatisgarh**, **dated 10.09.2020 reported as AIRONLINE 2020 SC 722,** it is held as under:-

> *".....It is true that all the aforesaid witnesses are police officials and two independent witnesses, who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313 Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance."*

12. In another recent decision of Hon'ble Supreme Court rendered in **Surinder Kumar v. State of Punjab, 2020(2) SCC 563**, while considering somewhat similar situation, it was observed that "The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status."

13.Applying the aforesaid law laid down by the Apex Court, the evidence of Investigating Officer Rohit Patel(PW-4) regarding the disclosure statements Exs. P-6 and P-7, the seizure of stolen property (Ex. P-8) cannot be disbelieved only because the punch witnesses have not supported the prosecution case. This case is well supported by the FIR lodged by the complainant Pushpa (PW-1). Devendra Singh Kachhwah (PW-7) has also graphically supported the contents of FIR. The contents regarding incident has been well fortified not only by the complainant but also by the other witnesses

Veena Agrawal (P.W.2) and Nisha (P.W.3) in their Court statements. The accused persons are evidently identified by the prosecution witnesses during their statements. As such, the contention regarding improper identification is also found without merits.

14.So far as the omissions and contradictions are concerned, no such omissions or contradictions have been adverted by learned counsel for the appellants which goes to the root of the case. In this way, it is found that the learned trial Court has well considered the material available on record on proper perspectives and has not committed any error in appreciation of evidence. Accordingly, no infirmity or illegality is appeared in the impugned order of conviction passed by the learned trial Court in Session Trial No. 324/2017, hence, the same is upheld.

15.Now coming to the next appeal (Cr.A.No.8187/2019), which has been filed against the judgment passed in S.T. No.317/2017, in this case the prosecution has adduced as many as 9 witnesses i.e. Jamuna Bai (P.W.1), Prakash Khandelwal (P.W.2), Babulal (P.W.3), Pradeep Jadhon (P.W.4), Ashish Jain (P.W.5), Aanand Mohan Shrivastava (P.W.6), Mohanlal (P.W.7), Rajendra Kumar Jadhav (P.W.8) and Meena Pal (P.W.9). It is also worth mentioning here that no defence witness has been adduced.

16.Here, it is pertinent to mention that in this case, three persons were made accused and the trial Court has convicted only appellant Ajay and the remaining were acquitted. Actually, Jamuna Bai (P.W.1) has clearly deposed that accused Ajay was the person who has snatched her golden chain and she has seen him snatching the chain. So far as, the other accused Shivnarayan is concerned,

she has not supported the prosecution case in this regard. In this case identification parade was also carried out and she has identified her chain during the identification proceedings and also identified appellant Ajay. Her statement in cross-examination has not been controverted in any way.

17.Prakash (P.W.2) is a hearsay witness but the complainant has narrated him the aforesaid incident, just after the incident hence testimony of this witness is also relevant as per Section 8 of the Evidence Act. Witness Babulal (P.W.3) has seen the complainant screaming at the crime scene, as such the testimony of this witness is also relevant.

18.Pradeep Jadhav (P.W.4) has not supported the prosecution case and he has turned hostile, but, since the Investigating Officer of this case Rajendra Kumar (P.W.8) and other Police Officers supported the case of prosecution, the said memorandum statement and seizure of appellant Ajay is proved beyond reasonable doubt. Meena (P.W.8) is Additional Tehsildar and she has conducted identification of said chain and this witness has also supported the case of prosecution.

19.Certainly, this case has been mainly supported only by a single testimony of Jamuna Bai ((P.W.1) but it should be kept in mind that the incident of chain snatching was happened at a place where no other person could be expected to remain present. An incident of loot cannot be operated by accused persons at a place where more than one person are present.

20.On this aspect, the law laid down by Hon'ble Supreme Court in the case of ***Vithal Pundalik Zendge Vs. State of***

***Maharashtra reported, AIR 2009 SC 1110*** is worth referring to the context of the case. Relevant para 6 and 7 of the said judgment is reproduced below :-

> "..*6. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, 1872 (in short the `Evidence Act') the following propositions may be safely stated as firmly established:*
> ***(1)*** *As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.*
> ***(2)*** *Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.*
> ***(3)*** *) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.*
> *7. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated..."*

21.Learned counsel for the appellant strenuously submitted that since on the same set of evidence other accused persons namely Shivnarayan and Kiran were acquitted by the learned trial Court, then, this appellant cannot be convicted on the same. The law laid down by Hon'ble Supreme Court in its Full Bench decision, rendered in the case of **Gurcharan Singh Vs. State of Punjab reported in AIR (1956) SC 460,** is poignant in this regard. The relevant part of the judgment is mentioned below :-

> **"***Be that as it may, we are no more concerned with the case against those two accused persons who have been acquitted by the High Court; but*

> *so far as the appellants are concerned, the evidence of the four eyewitnesses referred to above is consistent and has not been shaken in crossexamination. That evidence has been relied upon by the courts below and we do not see any sufficient reasons to go behind that finding. It is true that three out of those four witnesses are closely related to the deceased Inder Singh. But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon. We need not notice the other arguments sought to be advanced in this Court bearing upon the probabilities of the case because those are all questions of fact which have been adverted to and discussed by the courts below."*

22.Here, it has to be kept in mind that this Court is not testing the legality of acquittal of two accused persons. In this appeal, on the basis of evidence of record, however, this Court is satisfied that the judgment of conviction passed by the learned trial Court is in accordance with law and facts. It is also well settled principle that the maxim "falsus in uno falsus in omnibus" has no application in India. Hon'ble Supreme Court in the case of **Shaktilal Afdul Gaffar Khan Vs. Basant Raghunath Gogle** reported in (2005) 7 SCC 749 has held as under **:-**

> **"** It is the duty of Court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to,

> is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence."

23.As such, the testimony of witnesses has not been relied regarding other co-accused, does not depreciate the value of their testimonies. In this case, the testimony of injured has been well supported by witnesses. That apart the said golden chain was also seized from possession of the present appellant and that fact was supported by Investigating Officer. Under such type of circumstantial evidence the testimony of a witness who is a victim of crime cannot be overlooked or overboarded.

24.Now turning to the sentencing part of the case, learned counsel for the appellant placing reliance on the judgment ***Naib Singh Vs. State of Punjab (1986) 4 SCC 401, Manohar Das Vs. State of Madhya Pradesh and other (2007) 2 MPWL 60*** has submitted that in this case inasmuch as the accused Shivnarayan has already undergone incarnation for a period of more than one year, he may be sentenced only for period of already undergone with enhancement of fine amount. On this aspect, the view of ***Hon'ble Supreme Court in the case of Jaswinder Singh (dead) through legal representative Vs. Navjot Singh and others*** reported in ***AIR (2022) SC 2481*** Para No. 26, 27 and 28 are reproduced below :-

> *26. An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and if the*

> *courts do notprotect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.10 It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated.*
>
> *27. A three Judges Bench of this Court in State of Karnataka v. Krishnappa12 while discussing the purpose of imposition of adequate sentence opined in para 18 that ".....Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence." Sumer Singh v. Surajbhan Singh (2014) 7 SCC 323.*
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> *28. The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric.13 While opportunity to reform has to be kept in mind, the principle of proportionality also has to be equally kept in mind.*

25.In view of aforesaid law, an adequate sentence is always required to protect the society from miscreants. Nevertheless, the incident happened more than six years ago, it can be taken as instigating circumstances. However, on this sole ground, this Court is not inclined to let of the appellants with the period already undergone.

26. The learned trial Court has convicted the appellants for 5 years RI with the fine of Rs. 5,000/-. Looking to the enhancement in crime of chain snatching, the punishment does not seem to be harsher. However, the fact that the appellants are facing ordeal of trial since the year 2017 and in between 6 years are elapsed, should

be taken into account. Hence, looking to the gravity of the charges and also mitigating circumstances, punishment for three years RI with fine of Rs. 5,000- seems to be proper for both the appellants in the respective cases.

27.The same punishment would also be appropriate for the other case in which appellant Ajay has been convicted. Certainly, appellant Ajay has already completed more than five years in jail, hence, he deserves to be released forthwith after depositing he fine amount. So far as, the appellant Shivnarayan is concerned, since he has been released on bail, he is liable to be sent back to the jail for suffering remaining jail sentence.

28.Before parting, the contention of concurrent imprisonment of sentence is also required to be considered although in the fact of the case, it is not more required as per law enshrined under Section 427 of the CrPC. However, it can be directed at the stage of awarding sentence during the course of trial or in appeal.

29. On this aspect, the Hon'ble Division Bench of this Court in the case of **A.S. Naidu Vs. State of Madhya Pradesh 1975 Criminal Law General 498** has mandated that this Court can exercise its discretion under Sub-section (1) of Section 397 of the Code and direct the sentence awarded in a subsequent trial to run concurrently with the sentence awarded in a previous trial, even after the appeals or revisions preferred by the convict against his conviction in the said trials have been dismissed.

30.However, full Bench of this Court in the case of **Sher Singh Vs. state of Madhya Pradesh 1989 Criminal Law General 632** has ordened as under:-

> *"…7. The reference is, therefore, answered by saying (i) that the decision of this Court in A.S. Naidu v. State of M.P. 1975 Cri LJ 498 (supra) is no longer good law to the extent it says that power under Section 427(1) **of the Code can be exercised by the trial or appellate court at any stage at any time** even after decision on merits in the case but not Under Section 482 and the court does not become functus officio. (ii) The High Court has power in appropriate cases to entertain an application under Section 482 of the Code by invoking its inherent powers at any time subsequent to the decision in a given case even if the trial court or the appellate or revisional court has failed to exercise its discretion under Section 427(1) of the Code. The case be now placed before the single Bench for decision on merits. "*

31.On this aspect, **Hon'ble Apex Court in the case of Mr Kudwa Vs. State of Andhra Pradesh 2006 Law Suit (SC) 1213 has opined as below:-**

> *".. However, in this case the provision of Section 427 of the Code was not invoked in the original cases or in the appeals. A separate application was filed before the High Court after the special leave petitions were dismissed. Such an application, in our opinion, was not maintainable. The High Court could not have exercised its inherent jurisdiction in a case of this nature as it had not exercised such jurisdiction while passing the judgments in appeal. Section 482 of the Code was, therefore, not an appropriate remedy having regard to the fact that neither the Trial Judge, nor the High Court while passing the judgments of conviction and sentence indicated that the sentences passed against the appellant in both the cases shall run concurrently or Section 427 would be attracted. The said provision, therefore, could not be applied in a separate and independent proceeding by the High Court. The appeal being devoid of any merit is dismissed."*

32.View of the Hon'ble Apex Court is recently followed by the Hon'ble Division Bench of this Court in the case of ***Dheeraj alias Dheeru Vs. State of Madhya Pradesh 2023 Law Suit (MP) 2022.***

33.In the conspectus of the aforesaid facts and enunciation of law, it emerged as a well settled proposition that the power enshringed under Section 427 (1) of CrPC can be exercised by the Trial Court as well as by the Appellate Court at any time and even after decision of merits in the case. Hence, since this Appellate Court can use its discretion with regard to direct the subsequent sentence for running concurrently with such previous sentence and therefore, the request of appellant regarding issuing direction for the concurrent sentence with previous sentence is accepted.

34.As a result thereof, since the appellant Ajay has already completed more than 5 years in jail, he should be released forthwith after depositing the fine in both offences. In case of failure of aforesaid stipulations, the appellant shall suffer for one month SI for each offences with fine of Rs. 5,000/-.

35.On the other hand, the appellant Shivnarayan is directed to surrender before the Trial Court within 15 days from the pronouncement of this judgment for suffering the remaining sentence, failing which, the Trial Court will proceed to comply with and send the appellant in jail for suffering the remaining jail sentence as aforesaid.

36.A copy of this order be sent to the concerned trial Court for necessary information.

37.The order of the learned trial Court regarding disposal of the seized property stands affirmed.

38.Pending application, if any, stands closed.

39. With the aforesaid, the criminal appeals stand disposed off.

Certified copy, as per rules.

**(PREM NARAYAN SINGH)**
**JUDGE**

VD/-