

Court No. - 82

Case :- CRIMINAL APPEAL No. - 176 of 1982

Appellant :- Mani Pal Singh And Another

Respondent :- State

Counsel for Appellant :- P.M. Mishra,P.N. Mishra,Rajesh Singh,Shamsher Singh

Counsel for Respondent :- A.G.A

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the appellants, learned AGA for the State and perused the record.
2. The instant criminal appeal has been preferred by the appellants against the judgement and order dated 18.01.1982 passed by IIIrd Additional Sessions Judge, Bijnor in Case Crime No.10 of 1980, Session Trial No.376 of 1980 (State Vs. Magan Singh and others), under Sections 460 & 411 IPC, Police Station Kiratpur, District Bijnor whereby the appellants were convicted under Section 411 IPC and were further sentenced to undergo rigorous imprisonment for two years with fine of Rs.1,000/- along with default sentence.
3. At the very outset, it is to be kept into mind that the present criminal appeal was preferred by two appellants, namely, Mani Pal Singh and Virendra Singh and during pendency of appeal, appellant no.2 Virendra Singh died and the appeal abated qua him on 14.12.2022. Hence, appellant no.1 Mani Pal Singh is the sole surviving appellant in this appeal, who is contesting the same.

4. The prosecution story, in brief, as narrated in the F.I.R. is that on 21.11.1980 informant Smt. Sushila Devi had gone to the house of her neighbour Shiyansh Kumar and when she returned at about 10:00 PM, she found her husband aged about 70 years lying dead on cot and it appeared that he was murdered by use of knife and the jewels kept in the box were also missing. F.I.R. was lodged on the basis of written report of Smt. Sushila Devi against unknown person. Investigation started and during the course of investigation, four accused persons were traced out by the police and some incriminating articles were also recovered from their possession. After completion of the investigation, charge sheet under Sections 460 & 411 IPC was submitted by the police against four accused persons, namely, Magan Singh, Mani Pal Singh, Narendra Singh and Virendra Singh respectively.

5. The offence being exclusively triable by the sessions court, the case was committed to the court of Sessions where charges under Sections 457, 392, 302/34 IPC were framed against all the accused persons to which they denied and claimed for trial. Co-accused Virendra Singh was charged separately for the offence under Section 411 IPC to which he also denied and claimed for trial.

6. The prosecution to bring home the charges against accused persons relied upon oral evidence of P.W.-1 Smt. Sushila Devi, the informant, P.W.-2 Shreyansh Kumar, the witness of fact, P.W.-3 Shanti Prasad, witness of fact,

P.W.-4 Virendra Singh scribe, P.W.-5 Hukum Chandra the witness of arrest and recovery, P.W.-6 Chandra Pal the witness of recovery in respect of accused Virendra Singh, P.W.-7 S.I. Satyapal Singh, the Investigating Officer and to corroborate the oral evidence the prosecution further relied upon the documentary evidence as written report Ex.Ka-1, list of articles which were robbed Ex.Ka-2, recovery and search memos of gold and silver jewellery Ex.Ka-3, Ex.Ka-4, recovery memos of articles Ex.Ka-5, chik F.I.R. Ex.Ka-6, G.D. Ex.Ka-7, inquest report Ex.Ka-8, photo nash Ex.Ka-9, challan nash Ex.Ka-10, report for post-mortem Ex.Ka-11, G.D. Ex.Ka-12, site plan of place of recovery of some jewels in respect of accused Virendra Ex.Ka-13, site plan in respect of recovery from accused Magan Singh and Mani Pal Singh Ex.Ka-14, memo of supurdaginama of torch Ex.Ka-15, site plan of place of occurrence Ex.Ka-16 charge sheet Ex.Ka-17 and post-mortem report Ex.Ka.-18.

7. After closure of the prosecution evidence, the incriminating circumstances and evidence were put to the accused persons in their statements under Section 313 Cr.P.C. wherein they claimed the prosecution evidence to be false and fabricated and pleaded their innocence.

8. D.W.-1 Ombir Singh, D.W.-2 Rajendra Singh, D.W.-3 Balwan Singh and D.W.-4 Rajeshwar Prasad have been examined as defence witnesses.

9. After hearing the learned counsel for the parties and considering the entire evidence on record, the learned trial court recorded the conviction of accused Magan Singh, Mani Pal Singh and Virendra Singh under Section 411 IPC and they were sentenced for two years rigorous imprisonment with fine of Rs.1000/- each along with default stipulation.

10. The co-accused Narendra Singh was found not guilty of any offence and he was therefore acquitted of all the charges levelled against him.

11. The accused persons Magan Singh, Mani Pal Singh and Virendra Singh were also acquitted of all the remaining charges levelled against them except charge under Section 411 IPC.

12. It is also to be noted that although charges under Sections 457, 392, 302/34 IPC were framed against all the accused persons on 22.12.1980 and on 16.02.1981 additional charge under Section 411 IPC was framed against accused Magan Singh and Mani Pal Singh and additional charge under Section 460/34 IPC against all the accused persons was further framed on 04.08.1981 and subsequently on 29.09.1981 a separate charge under Section 411 IPC was framed against the co-accused Virendra Singh to which they denied and claimed to be tried but the learned trial court has explained in paragraph no.4 of the impugned judgement that the prosecution evidence needs to be examined in the light of

charge under Sections 460/34 & 411 IPC and it further held that charges under Sections 457, 392, 302/34 IPC should not have been framed legally. Hence, the learned trial court itself presumed that there was no necessity to analyse and assess the prosecution evidence in the light of the charges under Sections 457, 392, 302/34 IPC. Hence, in the present appeal it is to be determined whether the prosecution succeeded to prove its case beyond reasonable doubt for the offence under Sections 460/34 & 411 IPC.

13. P.W.-1 Smt. Sushila Devi, the informant in her examination-in-chief states that on 21.01.1980 she had gone to the house of Shreyansh Kumar in her neighbourhood and when at about 10:00 PM she came back, she found her husband lying on bed having knife injuries over his neck. He was dead and the jewels kept in the almirah and box were also not there. She dictated a report to Virendra Kumar on the basis of which F.I.R. was ldged and the said written report has been proved by P.W.-1 as Ex.Ka.-1. She further states that a list of looted articles was also prepared on her dictation by Virendra Kumar, which was handed over to the police and she proves the said list as Ex.Ka.-2. Several robbed articles were produced before the Court and P.W.-1 identifies the same as material Ex.-1 to material Ex.-17 in her evidence recorded before the court.

14. P.W.-2 Shiyansh Kumar is the neighbourer of the deceased and states in his examination-in-chief that on 21.01.1980 in the night when he was going to temple

with Rakesh Jain he saw all the four accused persons, namely, Magan Singh, Narendra Pal, Mani Pal and Virendra Singh coming out of the house of deceased Khajan Chandra upon which they were identified in the electricity light. Subsequently, in the same night he came to know about the murder of Khajan Chandra and he reached there and found Khajan Chandra as dead and the jewellery boxes lying on the floor in open condition. He narrated the whole story to the police.

15. P.W.-3 Shanti Prasad is the native of the village of the informant and the accused persons are well known to him. He states in his deposition that on 21.01.1980 at about 08:30 P.M. when he was going to the house of his aunty in front of the house of Khajan Chandra, he saw all the four accused persons entering into the house of Khajan Chandra in the light of battery and when he enquired into for their presence over there co-accused Narendra Singh replied that they had come to purchase some stamp from Khajan Chandra and subsequently he came to know about the incident of murder of Khajan Chandra and robbery committed in the house of the informant. He also affirms the presence of Shiyansh Kumar on spot at the time when he visited the house of the informant subsequently in the same night.

16. P.W.-4 Virendra Kumar is the scribe who states that the report Ex.Ka.-1 was written by him on the dictation of Smt. Sushila Devi who happens to be her maternal

grand mother. He further identifies his signature and handwriting over the list of stolen articles Ex.Ka.-2.

17. P.W.-5 Hukum Chandra is the witness of arrest and recovery of two accused persons. In his evidence he proves the factum of arrest of co-accused Magan Singh and Mani Pal and recovery of some gold and silver articles from their possession and the memos of arrest and recovery have been proved by him as Ex.Ka.-3 & Ka.-4. Further, he identifies the case property material Ex.-1 to material Ex.-17 before the court.

18. P.W.-7 S.I. Satyapal Singh, the Investigating Officer of the case affirms the proceedings of investigation in his statement. He proves the chik F.I.R. and registration G.D. as Ex.Ka.-6 & 7 as secondary witness for the scribe Head moharrir Ashok Kumar. He further proves inquest report Ex.Ka.-8, photo nash Ex.Ka.-9, challan nash Ex.Ka.-10, report to C.M.O. for post-mortem Ex.Ka.-11, copy of G.D. Ex.Ka.-12, site plan of the place of recovery pertaining to accused Virendra Kumar Ex.Ka.-12 and Ex.Ka.-13, site plan pertaining to recovery from accused Mani Pal Singh and Magan Singh Ex.Ka.-14, memo of supurdaginama of torch Ex.Ka.-15, site plan of place of occurrence Ex.Ka.-16 and charge sheet Ex.Ka.-17 in his evidence.

19. Learned counsel for the appellant vehemently assailed the impugned judgement and order and it has been submitted that the impugned judgement and order is not sustainable in law. On the same set of evidence, the

learned trial court recorded acquittal of the accused persons for the offence under Section 460/34 IPC whereas in arbitrary manner charge under Section 411 IPC was presumed to be proved against them. Since the main offence for robbery/dacoity/theft has not been proved beyond reasonable doubt, the learned trial court was not legally correct to record the conviction of the accused appellant under Section 411 IPC for the simple reason that there was no evidence on record to connect the incriminating articles allegedly retrieved from the possession of the appellant with any stolen or looted property which was a sine qua non for the application of the provisions of Section 411 IPC. Several other submissions have been made by the learned counsel for the appellant to give force to his plea that the impugned judgement and order is not sustainable under law.

20. Per contra, the learned AGA vehemently opposed the present appeal and it has been contended that the impugned judgement is not liable to be interfered with for the reason that the learned trial court recorded the conviction of the appellant only for the offence which was proved beyond reasonable doubt by relying upon the reliable evidence adduced by the prosecution. It is further submitted that the prosecution case has been well proved by the evidence of witnesses of fact which is further corroborated by the testimony of the formal witnesses and with the aid of documentary evidence as well.

21. In the light of the submissions made by the learned counsel for the parties and considering the entire evidence on record, this Court proceeds to evaluate the merits and legality of the impugned judgement and order.

22. Since the conviction of the appellant has been recorded only under Section 411 IPC, the evidence on record which relates to recovery of incriminating articles from the possession of the accused appellant is relevant for the purpose of disposal of this appeal.

23. The prosecution story proceeds with the allegation that when the present appellant was arrested by the police during investigation along with other co-accused Magan Singh, the police recovered one silver article, one pair dast band chauki, one silver piajeb, one golden bangle and one silver ring material Ex.12 to Ex.-17 respectively and cartridges as well from his possession. P.W.-7 the Investigating Officer of the case in his examination-in-chief narrated that on information of some informer received on 23.01.1980 at about 04:45 PM, the police party proceeded to the railway gate towards village Sisauna and when two miscreants came there they were caught hold by the police. Their search was made on the spot and some golden and silver jewels along with one country made pistol and cartridge were retrieved from the possession of accused Magan Singh whereas from the possession of present accused appellant Mani Pal Singh, the recovery was made as mentioned here-in-above.

24. The recovery witness P.W.-5 in his cross examination admits that deceased Khajan Chandra was real uncle and he was not acquainted with Man Pal Singh prior to the occurrence and an attempt has been made by this witness to identify the accused persons before the Court during the course of his deposition but he has wrongly identified the present appellant by naming him as Magan Singh and the accused Magan Singh was identified by him as present appellant Mani Pal Singh. P.W.-5 further admits that the accused persons were held on a public place. The conduct of this witness is quite unnatural when he states that after the recovery of incriminating articles, he did not disclose this fact to his aunty, the informant. Not only this but he never disclosed this fact to anyone that the articles retrieved from the possession of the appellant Mani Pal Singh belong to his uncle Khajan Singh. This witness also admits that both the accused persons were held by the police in the back side of Mal Godam. The evidence on record reveals that it is a public place as also shown in the site plan Ex.Ka.-14. It is very strange that P.W.-5 the witness of recovery was found by the police to witness the incident of arrest and recovery of accused Mani Pal Singh who happened to be the real nephew of the deceased but no independent public witness was taken from the place of occurrence which is a public place. This witness has been unable to specify as to what was the weight of the jewels allegedly recovered from the possession of the present accused-appellant.

25. P.W.-7 the Investigating Officer of the case has stated that the police held two miscreants on 23.01.1980 in the evening and subsequently they disclosed their name as Magan Singh and Mani Pal Singh and some jewellerys were retrieved separately from their possession. He further states he was not aware about the fact that witness Hukum Chandra was the nephew of the deceased. He has been unable to answer as to whether the signatures of the witnesses were obtained upon the sealed bundle or not.

26. Learned counsel for the appellant submits that there is no ravanagi G.D. on record to show that on 23.01.1980 the Investigating Officer along with other police personnel made an exit from the police station on information of the miscreants and proceeded to the railway track.

27. In **Rifaqat alias Fakkar vs. State of U.P., 2007 SCC OnLine All 1638**, this Court has held as under:

“15.....It is also worthwhile to mention here that P.W. 1 and P.W. 2 have stated in their testimony that they had proceeded on patrolling duty from their concerned police station and reached at the place of incident. He was apprehended by the police from his house as per suggestion. In such circumstances, it was essential that Rawanagi G.D. of P.W. 1 and P.W. 2 should have been proved on behalf of prosecution, so that it could be proved that they had proceeded from concerned police station and reached at the relevant place of incident. In absence of producing Rawanagi G.D. of these witnesses, the presence of both the witnesses is liable to

*be suspicious at the place of incident.
Therefore, search and seizure has become
ultimately suspicious.....”*

28. No doubt, rawangi G.D. is a very significant and relevant document to show that in fact the police party had left the police station for a particular purpose on a particular date and time. Since this G.D. is not available on record, the very inception of the prosecution case becomes doubtful. It certainly is a dent in the prosecution case, if the prosecution fails to prove that the police party in fact had left the police station on relevant date and time. The prosecution was always under obligation to corroborate this fact by production of the rawangi G.D. which, for the reasons best known to prosecution, was never produced before the trial court.

29. Learned counsel for the appellant further submits that P.W.-7 the Investigating Officer in his evidence states before the Court that the articles which were recovered from the possession of accused-appellant Mani Pal Singh are material Ex.-12 to Material Ex.-17 whereas the informant who has identified his jewels and articles before the court during her deposition states that the articles material Ex.-6 to Ex.-11 were kept in the sealed packet where upon Mani Pal Singh was returned and the sealed packet wherein material Ex.-12 to Ex.-17 were kept was bearing the name of Magan Singh. This is a material contradiction which makes the prosecution story highly doubtful as to which articles were retrieved from the bag taken by the present appellant Mani Pal Singh hence, the

theory of the recovery made by the prosecution also becomes unreliable.

30. Learned trial court while recording the conviction of the appellant under Section 411 IPC did not consider the above portion of the evidence on record and this court takes notice of this fact that if the prosecution fails to establish as to what were the incriminating articles which were retrieved from the appellant Mani Pal Singh on the basis of cogent and reliable evidence, he could not be convicted under Section 411 IPC.

31. The attention of this Court is also drawn to the evidence adduced by the appellant during the trial. Four defence witnesses have been examined by the defence side.

32. D.W.-1 Ombir Singh is the witness of plea of alibi taken by accused Narendra Singh and D.W.-2 Rajendra Singh also deposes in favour of accused Narendra Singh but since this appeal does not relate to accused Narendra Singh there is no need to analyse and scrutinize the evidence of D.W.-1 & D.W.-2. Further D.W.-4 Rajeshwar Prasad deposes in his testimony that accused Magan Singh was held by the police from bricklin but for the same reason as mentioned above this Court finds no need to analyse the evidence of D.W.-4.

33. D.W.-3 Balwan Singh in his testimony deposes that the police held and took away the present appellant Mani

Pal Singh from his house. He has stated that accused Main Pal Singh is the native of his village and is well known to him. He had witnessed the incident when the S.O. and two police personnels took away Mani Pal Singh from his house. Subsequently, he came to know that for an offence of murder he was held by the police.

34. It has been vehemently argued by the learned counsel for the appellant that P.W.-2 Shriyansh Kumar Jain in his deposition states that Dr. Dharam Pal was the Manager of his college who happens to be the son of Dr. Anand Prakash. The Manager removed the principal of the college from his post and it was protested and a letter was sent in this regard to the Manager. The application bears his signature as well and has been proved as Ex.Kha-1 by P.W.-2.

35. It is always to be borne in mind that in a criminal trial normally the burden goes upon the prosecution to prove its case beyond reasonable doubt and if the defence only creates some suspicion in respect of involvement of the accused in the commission of the alleged crime the same is sufficient to fail the prosecution story and the conviction of the accused cannot be sustained.

36. In view of that I find that the story put forward by the prosecution that some incriminating articles and jewels were retrieved from the possession of the present appellant Mani Pal Singh by the police is a false and concocted story and does not inspire confidence and in

this factual scenario, the accused appellant is entitled for benefit of doubt and his conviction under Section 411 IPC made by the learned trial court cannot be sustained in the eyes of law.

37. Resultantly, the appeal is **allowed** and the present accused-appellant is acquitted of the charge under Section 411 IPC. Appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

38. The material exhibits shall be disposed of in accordance with relevant law/rules by the competent court/authority.

39. A copy of this order alongwith trial court record be transmitted to the Sessions Judge, Bijnor for necessary compliance.

Order Date :- 23.10.2024
Sanjeet