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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1373 of 1986

Bhola

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: I.m. Khan, Jitendra Singh, Narendra Kumar
Counsel for Respondent(s)	: A.G.A.

Court No. - 71

HON'BLE AVNISH SAXENA, J.

1. The present criminal appeal is preferred under Section 374 CrPC by the sole accused appellant- Bhola on being aggrieved by judgment of conviction and sentence dated 21.5.1986 in State Vs. Bhola and another (S.T. No.187 of 1985) wherein the accused appellant was convicted for the offence under Section 394 IPC and punished with rigorous imprisonment of five years and fine of Rs.500/- and in default of the payment of fine, six months rigorous imprisonment.

2. Heard Sri Narendra Kumar, learned counsel for the appellant and Sri Chandra Badan, learned A.G.A. for the State.

3. The prosecution case disclosed in the FIR dated 30.1.1985 lodged at 11:30 AM at P.S. Kishunpur, District- Fatehpur is such that Sushila Devi (P.W.-6) along with Param Sundari who were posted at Primary Health Centre, Vijaipur were going to village Sarauli on 29.1.1985. When they reached the canal culvert at about 08:00 PM two persons came there pointed country made pistol and started robbing them of their

jewellery. They have started crying for help, hearing them, Chheddu son of Pahalwan and Babu Singh son of Ram Raj of village Sarauli came there. Seeing them, the miscreants have fired at them with country made pistol, due to the fire Chheddu suffered fire arm injuries on his right leg and Babu Singh suffered fire arm injuries on his right wrist. These two persons then apprehended one of the miscreants but the second miscreant has sprinted away along with the booty. The apprehended accused has disclosed his name as Bhola son of Badri Kori resident of village Takkipur, P.S.- Khakhereru, District- Fatehpur. He has also disclosed the name of second miscreant as Sheo Kulli @ Ranvir Singh son of Sughar Singh resident of village Takkipur, P.S.- Khakhereru. This accused appellant was taken to the police station. The items, which were robbed by the accused appellants, i.e. 1. chain with pendant, 2. silver ring, 3. nose pin, 4. brass earring, 5. brass ring and Rs.10/-. As it was already dark and night hour, the report could not be lodged on the same day.

4. The case was registered at Case Crime No.21 of 1985 for offences under Sections 394, 307 IPC against two named accused, which was entered in GD No.13. After registration of the FIR, the injured were taken to medical officer Vijaipur where the injuries of Chheddu and Babu Singh were examined at 4:15 PM and 4:30 PM, respectively, on 30.1.1985. The investigation has been carried out by S.I. Sukhdeo Pandey (P.W.3) who has investigated the place of occurrence, recorded the statement of witnesses and submitted charge sheet against two accused, namely, Bhola Kori and Sheo Kulli @ Ranvir Singh.

5. The charge against both the accused have been framed for offence under Section 394 read with 397 IPC on 2.1.1986. The prosecution has produced three witnesses of fact P.W.1- Babu Singh, P.W.-2, Chheddu, P.W.6 Smt. Sushila Devi and three formal witnesses, namely, S.I. Sukhdeo P.W.-3, the Investigating Officer, Dr. S.N. Awasthi P.W.-4, the doctor who has examined the injured, Constable Mukhtar Ahmad P.W.-5 who entered the chick FIR and GD.

6. The appellant in his statement under Section 313 CrPC has stated that he has been falsely implicated in the case by Babu Singh. The reason for false implication is that Babu Singh has asked the accused applicant for doing some work, which he has refused. He has also refused Babu Singh for getting sterilization of his wife. Further submits that Sushila Devi, the informant is the daughter of Babu Singh's aunt (Bua) who is working at the Primary Health Centre and called his wife for sterilization process. Further stated that the accused appellant was taken by Chheddu and Babu Singh from his house to hand him over to the police.

7. The trial court while recording the conviction of accused appellant on the basis of statement of the injured and informant observed that there is nothing to discard the testimonies of witnesses, whose testimonies are corroborated to each other and are reliable. Further observed that there is no evidence against co-accused Sheo Kulli @ Ranvir Singh, hence, acquitted him of the offence.

8. Learned counsel for the accused appellant has submitted that the witnesses are not trustworthy, if their deposition is taken into consideration in the light of their cross examinations. There is no role attributed on the accused appellant of firing at the injured. The accused appellant was apprehended from his house and given into the custody of police. The witnesses are not reliable. The FIR is delayed, as during the whole night the accused appellant was kept in custody of the informant. There is consistency in the statement of the witnesses about the role of the accused appellant. The site plan of the case does not show the place from where the injured witnesses have heard the shrieks of the informant. The independent witnesses who were there along with the informant has not been produced. The co-accused on whom the role of shooting is attributed, has been acquitted. The accused appellant has not committed any offence, hence, he may be acquitted.

9. Per contra, learned A.G.A. for the State has submitted that it is the matter of robbery with two ladies who were going to village. The booty

robbed from the informant was taken away by the co-accused. The FIR is prompt. The investigation has been carried out by the Investigating Officer in the right direction and the accused appellant has been apprehended by the injured witnesses at the place of incident. The witnesses have rightly identified the accused appellant and the trial court has rightly appreciated the evidence on record and convicted the accused appellant. Hence, submits that the appeal is devoid of merit and is liable to be dismissed.

10. This Court has taken into consideration the rival submissions made by the parties and perused the record.

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.¹¹ The point of consideration in the present appeal is:-

(a) Whether the accused appellant has committed robbery with the informant and voluntarily caused hurt to Chheddu and Babu Singh?

(b) Whether the trial court has rightly appreciated the oral and documentary evidence and reached to the right conclusion in convicting the accused appellant for the offence of robbery?

12. Before considering the ocular and documentary evidences adduced in the case, it would be necessary to mention that the alleged robbery has been committed by two accused. The accused appellant was apprehended by injured at the place of incident whereas another accused managed to escape along with the booty. Another accused was arrested by the police. The charge sheet has been submitted against them on the basis of statements of the witnesses, but during the deposition it is found that co-accused Sheo Kulli @ Ranvir Singh was not involved in the crime and he has been acquitted of the charge. The remnant facts shows that it is the second miscreant has opened fire at the witnesses Chheddu and Babu Singh. It is the he, who has robbed the informant and left with the booty and the accused appellant Bhola was arrested on the spot, who was neither attributed the role of opening fire nor robbing the informant, but held guilty because he was allegedly apprehended at the

place of incident. This fact is to be kept in mind while going through the testimonies of the eye witnesses.

13. P.W.-6 Smt. Sushila Devi was the first person to encounter the robbery. Hence, her deposition is required to be taken into consideration first. In her statement she has stated that she is on the post of ANM at Primary Health Centre, Vijaipur. She has stated that she was going to village Sarauli along with Param Sundari, when she has been robbed on pistol point. It is not the case of prosecution that Param Sundari has also been robbed. The prosecution has not produced her as a witness. She further stated that the miscreant has fired single shot. Two witnesses suffered injuries. P.W.-1 Babu Singh suffered injuries on his right hand. P.W.2 Chheddu suffered injury on his right leg. P.W.-3, the Investigating Officer has not shown in the site plan where these two witnesses were standing at the time of opening of fire. It is also not on record that how these two injured witnesses were placed at the time when injury was received to them. It is a bit doubtful as to how the two persons who were coming to rescue the informant suffered gunshot injuries on right side of their body, more particularly Chheddu suffered on his right leg middle surface, 21 cm below right knee joint, kept under observation and advised X-ray for foreign body. No blackening, no tattooing and no wound of exit and Babu Singh suffered gunshot injuries on his right wrist posterior surface.

14. P.W.-6 Smt. Sushila Devi has further stated that there was no recovery from the accused appellant- Bhola. He was not even having country made pistol or the booty.

15. During her cross examination, P.W.-6 Smt Sushila Devi has stated that there was sterilization camp at Primary Health Centre, Vijaipur. She took two cases but none has turned up, whereas, Param Sundari has had two cases of sterilization matured. She has further stated that all the persons are of village Sarauli. She has further stated that when she was coming along with Param Sundari, they were also accompanied with two ladies who had under gone sterilization and was also accompanied with

the mother of one lady. It shows that there were five ladies present at the time of robbery. The four ladies present at the incident are star witnesses but they have not been produced by the prosecution.

16. The trial court while recording the evidence of P.W.-6 Smt. Sushila Devi has specifically asked certain questions about the writing of written information. This witness has replied that first information report was written at village Sarauli which was a rough. Subsequently, the Gram Pradhan has asked her to prepare a fresh written information. The one she has proved before the Court as Ext.Ka.6 is the subsequent written information. She has further stated that 15-20 persons along with Pradhan of the village has accompanied them to the police station for lodging the FIR.

17. The accused appellant was apprehended by two injured persons in the night of 29.1.1985 at canal culvert at about 8:00 PM. The accused appellant was tied by the 'Angocha' (scarf) and kept at the house of Pradhan. According to this witness he was also beaten up. On questioning as to why the FIR was not lodged on the same day and the accused appellant, who was apprehended, was not handed over to the police that day. The reply of the three witnesses of fact is that it was dark and night, hence, they were scared of going to police station. For more than 12 hours, the accused appellant was under the custody of the informant, the injured witnesses and Pradhan.

18. The statement of P.W.-6 Smt. Sushila Devi does not inspire confidence to be truthful, because out of five ladies she was the only person who has been robbed. The sterilization programme was continuing. It is the statement of the accused recorded under Section 313 CrPC that he was asked by Babu Singh for sending his wife for sterilization, which she has refused and this witness was a bit annoyed by the failure of her in calling ladies for sterilization.

19. The other two witnesses of fact namely Babu Singh P.W.-1 and Chheddu P.W.2 have stated that they were in their field at the time when they have heard the shrieks of ladies. The field of Chheddu and Babu

Singh is situated at the distance of 2-3 fields in between. It is stated that their field lies at the north of culvert. The Investigating Officer has not shown the place where the field of these witnesses is situated. The Investigating Officer has also not shown the place from where the accused appellant has opened fire on these witnesses.

20. The injury sustained by Chheddu and Babu Singh reveals that Chheddu suffered gunshot wound of entry $\frac{1}{4}$ cm x $\frac{1}{4}$ cm x muscle deep on the right leg, medial surface, 21 cm below the right knee joint, kept under observation and advised X-ray for foreign body. No blackening, no tattooing and no wound of exit. The injuries sustained by Babu Singh is one gunshot wound of entry $\frac{1}{4}$ cm x $\frac{1}{4}$ cm muscle deep on the right wrist post surface, kept under observation and advised X-ray. No blackening, no tattooing and no wound of exit. It was the observation of Dr. S.N. Awasthi P.W.-4 that these injuries is about one day old. There is no X-ray carried out to establish whether there is any foreign body present or not.

21. P.W.-1 Babu Singh and P.W.-2 Chheddu both have stated that they had seen Sheo Kulli in the village and they also knew Bhola.

22. The injuries suffered by the injured witnesses stated to be suffered by gunshot fire by the co-accused. The co-accused is not convicted in the present case. The injuries has not been attributed on the accused appellant. The presence of witnesses itself doubted in view of the single gunshot fired by the co-accused. The FIR is delayed. The reason for the delay is not plausible. The accused appellant when apprehended was neither having the booty nor he was having any weapon for committing the robbery, who is of the same village. It is also a bit doubtful that an injured person could have apprehended the accused when one of the accused managed to escape, on whom the role of collecting the booty and firing the shot is attributed.

23. Hence, the ocular and documentary evidences does not show the involvement of accused appellant in the offence of robbery in view of the evidences adduced by the prosecution.

24. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh** reported in **(2024) 2 SCC 666**, Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

25. Thus, the judgment of conviction and sentence dated 21.5.1986 passed by IVth Additional Sessions Judge, Fatehpur in Session Trial No. 187 of 1985 (State Vs. Bhola and another), under Section 394 IPC, is hereby set aside.

26. The sole appellant- Bhola is acquitted for offence under Section 394 IPC.

27. Accordingly, the criminal appeal is **allowed**.

28. The accused appellant is on bail. His sureties and executed bail bonds stands discharged.

29. The record be remitted, forthwith, as per law.

(Avnish Saxena,J.)

May 06, 2026

Krishna*