

**CRA-S-116-SB-2004 and
CRA-S-1001-SB-2004**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 22.04.2015

1. CRA-S-116-SB-2004

Bhura Singh

.... Appellant

Versus

State of Haryana

.... Respondent

AND

2. CRA-S-1001-SB-2004

Kuldeep Singh

.... Appellant

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. G.S.Sidhu, Advocate,
for the appellant in CRA-S-116-SB-2004.

Mr. G.P.Singh, Advocate,
for the appellant in CRA-S-1001-SB-2004.

Mr. Anil Mehta, DAG, Haryana.

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PARAMJEET SINGH, J.

This order shall dispose of CRA-S-116-SB-2004 and CRA-S-1001-SB-2004 as common questions of fact and law are involved in both the criminal appeals.

Instant criminal appeals launch a challenge to the conviction of the appellants herein under Section 392 read with Section 397 of the Indian Penal Code (in short 'IPC') and Section 34 of IPC and the consequential sentence of imprisonment for ten years and to pay a fine of ₹20,000/- each, in default, to undergo rigorous imprisonment for a period of six months each, held out by the judgment of conviction and order of sentence dated 10.09.2003 passed in Sessions Case No.44/18.10.2001 by learned Additional Sessions Judge, Sirsa.

The factual matrix on which the prosecution version is founded is to the effect that on 06.05.2001, complainant-Vikas Taneja, who runs a tyre shop at Hisar Road, Sirsa, made a complaint to the police to the effect that on 05.05.2001, he was taking ₹2 lacs only from his shop at night. When he had put the amount in the dicky of his scooter No.HR-24-E-4079 and locked the same, appellant-Kuldeep Singh and another Kuldeep Singh son of Labh Singh had come to him and demanded the keys of scooter at the pistol point. Out of fear, he handed over the keys of his scooter. Thereupon, they fled away from the spot along with the scooter towards Surkhab Chowk. He along with others chased them, but could not get success. Thereafter, he made a written

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complaint (Ex.PD) to the police. Thereupon, FIR No.202 dated 06.05.2001, under Sections 392/216-A of IPC and Section 25/54/59 of Arms Act was registered at Police Station City Sirsa. Investigation was set into motion. During the investigation, the appellants and Kuldeep Singh son of Labh Singh were found hiding in an abandoned room in G.T.M.Mills, Sirsa. When the police tried to apprehended them, Kuldeep Singh son of Labh Singh managed to escape. However, remaining accused were arrested by the police. Robbed scooter as well as motor-cycle used by accused-Bhura during crime were recovered. Statements of witnesses were recorded. After completion of investigation, challan was presented under Sections 392 and 216-A of IPC and 25/54/59 of Arms Act in the Court of learned Judicial Magistrate Ist Class, Sirsa, who vide order dated 04.10.2001, committed the case to the Court of Session. Thereafter, the case was entrusted to learned Additional Sessions Judge, who framed charges under Sections 392 read with Section 397 of IPC and Section 34 of IPC against appellants-accused and Section 216-A of IPC against accused-Gurmit Singh and Labh Singh, to which they did not plead guilty and claimed trial.

To prove its case, prosecution examined PW 1 Head Constable Sher Singh, PW 2 Gurmail Singh, PW 3 Dara Singh, PW 4 Raj Kumar, PW 5 Ram Rattan, Inspector, PW 6 complainant-Vikas Taneja, PW 7 S.I.Anil Kumar, PW 8 Amarjeet Singh, PW 9 Retd. Inspector Jai Kishan

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and PW 10 Head Constable Satbir Singh. Thereafter, learned Public Prosecutor for the State closed the prosecution evidence.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent. However, no evidence in defence was led by the accused including appellants.

The trial Court after conclusion of trial convicted and sentenced the appellants as aforesaid, whereas, acquitted accused-Gurmit Singh and Labh Singh. Hence, these appeals by the appellants.

I have heard learned counsel for the parties and meticulously perused the record.

Learned counsel for the appellants emphatically argued that in the light of evidence adduced by the prosecution, conviction of the appellants in no way is permissible and they are entitled to be acquitted. They contended that no test identification parade was conducted. The appellants were not previously known to the complainant. They made reference to the application/complaint (Ex.PD) whereupon FIR was registered. In the complaint (Ex.PD), names of culprits have not been mentioned. It is only mentioned that two persons came to him and asked about the price of tyres; they had taken out their pistol and snatched the key of scooter in which he had placed Rs.2 lacs in dicky. In totality, there is no disclosure of the identity of culprits in the complaint (Ex.PD).

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Learned counsel further contended that once the complainant was not aware of identity of the culprits, identification for the first time in the Court is of no value and is a weak evidence. They further contended that appellant-Bhura Singh was not at all involved in this case whereas he is alleged to have been standing on the other side of road. They contended that the prosecution has failed to identify the perpetrators of the alleged offence through test identification parade or otherwise, it having failed to adduce any direct or convincing evidence to establish that the appellants were the culprits, their conviction, if allowed to stand, would result in travesty of justice. PW8 Amarjeet Singh, alleged eye-witness, stated that after two days of occurrence, police had told the names of accused-Kuldeep and Bhura in the police station. They further contended that the alleged recovery of scooter was effected from the pits i.e. open space, in pursuance of disclosure statement. The place of alleged recovery is accessible to all. Moreover, the complainant also admitted that he has moved the complaint (Ex.PD) at the instance of his father. They further contended that the prosecution has failed to produce any cogent or reliable evidence to prove the charges levelled against the appellants, therefore, the trial Court has erred in law while convicting the appellants. The impugned judgment of conviction and order of sentence ought to be interfered with in the interest of justice.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the appellants and contended that

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trustworthiness of complainant (PW 6) has been unmistakably proved by PW 8 Amarjeet Singh, eye-witness and PW 9 Retd. Inspector Jai Kishan, therefore, no interference is warranted.

I have given thoughtful consideration to the rival contentions of learned counsel for the parties.

The role assigned to the appellants is that appellant-Kuldeep Singh was one of two boys, who came to the complainant and asked about the price of tyres. Thereafter, they had taken out the pistol and demanded the keys of scooter in which the complainant put the amount of ₹2 lacs in dicky. The role assigned to appellant-Bhura is that he was standing on the other side of the road.

Admittedly, in the complaint (Ex.PD), complainant has not mentioned anything about the identity of the appellants. There is also no reference of appellant-Bhura in the complaint. PW 6 complainant-Vikas Taneja stated in cross-examination that name of accused-Kuldeep was disclosed to him by the police. Similarly, PW 8 Amarjeet Singh stated in cross-examination that names of accused-Kuldeep and Bhura were disclosed to him by the police in the police station. Admittedly, no test identification of the appellants was conducted by the investigating agency. The appellants were not previously known to the complainant and eye-witness and identification of the appellants for the first time in Court is a weak kind of evidence.

In *Vaikuntam v. State of A.P.* 1960, Cri. IJ. 1681, the Hon'ble

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SC, inter alia observed as under:-

“it is true that when he came to give evidence in court, the witness did point out to the same three accused as having been seen by him at the time of the murder. It is also true that the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There may be exception to this rule where the court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding.”

In ***State v. V.C. Shukla*** AIR 1980 SC 1382, a three Judge Bench of the Hon'ble Supreme Court held that identification by the witness for the first time in the court, without being tested by a prior T.I.P., was valueless.

In ***George v. State of Kerala*** 1998 (2) JCC 1927, the Hon'ble Supreme Court has held that though not fatal, absence of corroborative evidence of prior identification in a test identification parade makes the substantive evidence of identification in court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence.

In ***Dana Yadav @ Dahu and others v. State of Bihar*** (2002) 7 SCC 295, the Hon'ble Supreme Court after discussing the several

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pronouncements concluded as under:-

“Para 37 (a) to (d).....(e) Failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.”

In the catena of judgments, the Hon'ble Supreme Court has held that identification of the accused who is a stranger to the victim for the first time in the court is a weak evidence and should not be relied

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upon without corroboration in the form of earlier identification proceedings. Few of them have been mentioned above.

Otherwise also, there are material infirmities or contradictions in the prosecution case. PW 6 Vikas Taneja admitted that the complaint was written by him at the dictation of his father Joginderpal Taneja. But, surprisingly, said-Joginderpal Taneja has not been examined by the prosecution. The prosecution has taken a stand that appellant-Bhura Singh, being customer, is known to the complainant but the said fact has also not been mentioned by the complainant in his complaint (Ex.PD). PW 8 Amarjeet Singh stated that the police had not recorded his statement, but perusal of file reveals that the same is available on the file.

Pursuant to the disclosure statement of appellant-Kuldeep Singh (Ex.PJ), scooter bearing registration No.HR 24-E-4079 was recovered. The alleged disclosure statement was recorded on 06.05.2001 whereas the recovery was effected on 02.08.2001 i.e. after 85 days of the incident. The recovery was allegedly effected from the pits i.e. open place. Admittedly, no public witness has been joined for this recovery. PW 8 Amarjeet Singh has been cited as a witness in the recovery memo but he being an employee of the complainant cannot be considered as an independent witness. It would be difficult to imagine and believe that after the date of the incident, the scooter was still lying in the same place where the accused had thrown it and that too in an open place for such a long period. Passersby were admittedly going and coming and it is not

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believable that scooter was not touched by any of them. Moreover, the complainant and his father had denied to become witnesses on disclosure statements and recovery memo.

In view of above, the inescapable conclusion is that the prosecution has failed to prove either identity of the appellants or their involvement in the offence of robbery. This Court is of the unhesitant opinion that case of prosecution falls flat due to infirmities as discussed above and findings of the trial Court are liable to be interfered with.

Resultantly, both the appeals are allowed and judgment of conviction and order of sentence passed by the trial Court are set aside. The appellants are acquitted of the charges framed against them by giving them benefit of doubt. Fine, if any paid, be refunded to the appellants. The appellants are stated to be on bail. Their bail bonds and surety bonds stand discharged. The lower court record be sent back immediately for necessary follow up steps.

22.04.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE