

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-875-SB-2004
Date of Decision: 27.07.2015

Ved Parkash & Ors.**...Appellants****vs.****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Argued By: Mr. Sanjeev Kodan, Advocate for appellant No. 1.**Mr. Rajbir Sehrawat, Advocate and
Mr. Sanjeev Kadian, Advocate for appellants No. 2 & 3.****Mr. Munish Dev Sharma, AAG, Haryana.**

Raj Rahul Garg, J.

Ved Parkash, Bijender @ Vijay and Jitender @ Pintu have assailed the judgment of conviction dated 07.04.2004 and order of sentence of even date recorded by Sh. D. D. Yadav, the then Ld. Additional Sessions Judge (Adhoc), Jhajjar whereby all the above named appellants were convicted for committing offence punishable under Sections 412 IPC and were sentenced to undergo rigorous imprisonment for 03 years and to pay a fine of Rs. 3,000/- with default clause.

Initially, challan was presented in this case against six persons namely Ved Parkash, Bijender @ Vijay, Jitender @ Pintu, Dharamvir @

Choutala son of Prabhu, Vijender and Surender @ Nitu son of Zile Singh. By the impugned judgment, besides appellants, Dharamvir and Surender were also convicted under Section 412 IPC whereas accused Jasbir was acquitted.

Brief facts of the case are like this; that the complainant Ramesh Jain resident of Jain Gali, Delhi Gate, Jhajjar who was also residing at Rohini, Delhi was doing the business of Bidi and was having his office at Jhajjar. He was supplying the Bidi to his dealers at Bhiwani, Tosham, Dadri etc. and used to collect the weekly payments from those dealers. On 15.01.2001, he left his house at Rohini, Delhi at about 09.30 AM and reached his office at Jhajjar at about 11.30 AM via Bahadurgarh. He had to collect the payments regarding supply of Bidi-Cigarette from Dadri, Bhiwani and Tosham. So he left his office at Jhajjar with his Salesman Devdender Kumar in his vehicle Marshal Jeep bearing registration No. HR-14A-2203 driven by his driver Ved Parkash. At about 01.15 PM they reached at Bhiwani and collected an amount of Rs. 3,15,000/- from their dealer and then they collected Rs. 1,00,000/- from their Tosham dealer who was also having a shop at Bhiwani. They left Bhiwani at 02.00 PM with their vehicle and reached at Dardri at 02.40 PM. They collected Rs. 5,00,000/- from the dealer at Dadri. They left Dadri at about 03.00 PM packing the amount of Rs. 5,00,000/- in a box and the remaining amount of Rs. 4,15,000/- in a canvas bag. At about 04.00 PM when they reached at M.P. Majra with their vehicle an old Maruti car without number plate came from behind and stopped in front of their jeep so they stopped their jeep. Thereafter, three boys in the age group of 20-22 years got down from that Maruti car. Those persons had muffled their faces and were having pistols in their hands. The two other boys remained sitting in the Maruti car. Those boys slapped and gave fist blows and pulled them down their jeep including the driver of the jeep

and they ran away with the jeep and the cash therein. Thereafter, the complainant sent his salesman Devender to Jhajgarh while he himself and his driver Ved Parkash boarded some passenger jeep and went to Police Station, Jhajjar and he moved his written application Ex. PA on the basis of which ASI Ram Phal recorded the FIR Ex. PA/1. He then accompanied the complainant to the spot and inspected the site and prepared the rough site plan Ex. PS/1 with marginal notes. He recorded the statement of Devender. Thereafter, SI Randhir Singh, SHO also arrived at the spot and took up the investigation in his hand. He made search for the culprits but did not find any clue.

On 16.01.2001, SI Randhir Singh was present at Bus Stand, Jhajjar with his police party. Complainant Ramesh Jain met him there and expressed his suspicion about the involvement of his driver Ved Parkash in this incident. On the suspicion of Ramesh Jain, police party launched a search and arrested Ved Parkash-accused near Bus Stand, Bahadurgarh. On interrogation, he made the disclosure statement Ex. PB that he was involved in the dacoity with his co-accused Bijender, Jitender, Dharamvir, Jasbir and Surender and that the amount of Rs. 9,15,000/- was looted after due planning. He further disclosed that an amount of Rs. 1,00,000/- was paid to him by Bijender at his house and that he had kept that amount concealed in his house in an almirah under the clothes and could get the same recovered. The disclosure statement was signed by him and attested by Ashok Jain and Ramesh Jain. In pursuant to disclosure statement, he got recovered that amount from his almirah. The bundles of currency notes were bearing the signatures of Ramesh Jain and he identified the currency notes and the same were sealed in a packet and taken into possession vide recovery memo Ex. PN attested by the aforesaid witnesses.

SI Randhir Singh then set out in search of the remaining accused

and visited village Dulhera and then went to village Kherka Gujar where he received the secret information that the accused Vijay, Jitender and Dharamvir had gone towards the school of village Kherka Gujar. So, SI Randhir Singh rushed towards that place and found them present there and they all were apprehended. On interrogation, Dharamvir made the disclosure statement Ex. PD stating therein that out of the looted amount he received an amount of Rs. 1,50,000/- and that he had kept concealed the same in the almirah of his house and could get the same recovered. Then he got recovered the amount from his house and it was sealed and taken into possession vide recovery memo Ex. PO. The site plan Ex. PI/1 of the place of recovery was also prepared. Then, Jitender made the disclosure statement Ex. PE stating inter alia that an amount of Rs. 50,000/- had been kept concealed by him under the cot and could get the same recovered. In pursuance of his disclosure statement, he got recovered the amount which was sealed into a packet and taken into possession vide recovery memo Ex. PN and site plan of that place Ex. PJ/1 was also prepared. Thereafter, Bijender @ Vijay made the disclosure statement Ex. PC that he had kept concealed an amount of Rs. 3,17,000/- buried in his cattle shed in his house and could get the same recovered. Then, in pursuance of that disclosure statement he got the amount recovered from the stated place and it was sealed into a packet and taken into possession vide recovery memo Ex. PM. The amount was identified by the complainant Ramesh Jain. The site plan Ex. PQ/1 of place of recovery was also prepared. On 17.01.2001, Bijender was again interrogated on which he made the disclosure statement Ex. PF in the presence of Ramesh Jain and ASI Ram Phal that he had kept concealed Rs. 33,000/-, the undistributed amount, in a *Dibba* of *Gatta* in his house and could get the same recovered and then he got recovered the amount from the stated place which

was sealed into a packet and taken into possession vide recovery memo Ex. PP and the site plan Ex. PL/1 of the place of recovery was prepared. Jitender made the disclosure statement Ex. PG and got recovered the Maruti car bearing registration No. DL-3CJ-2240 from the field of village Jhajgarh which was taken into possession, vide recovery memo Ex. PR and the site plan Ex. PM/1 of that place was also prepared. Dharamvir made disclosure statement Ex. PH that he could demarcate the place where the car was left and then demarcated that place.

On 18.01.2001, ASI Ram Phal was present at Delhi Gate, Jhajjar with other members of this police party where the complainant Ramesh Jain met him and they all proceeded to village Dabodha in search of Jasbir-accused who met them there and so he was arrested from the petrol pump and on interrogation he made the disclosure statement Ex. PI that he had kept concealed a country-made revolver with three cartridges and got the same recovered from the stated place. The rough sketch Ex. PZ of which was prepared and it was sealed with cartridges and taken into possession vide recovery memo Ex. PS. He also made the demarcation of the place of occurrence, vide memo Ex. PU/1.

On 22.01.2001, Bijender was again interrogated on which he made disclosure statement Ex. PJ/1 to the effect that the amount of Rs. 2,60,000/- of the share of Surender @ Nitu had been kept concealed by him in the iron tank in his house and got the same recovered from the stated place which was sealed and taken into possession vide recovery memo Ex. PO and the site plan Ex. PN/1 of the place of recovery was also prepared. The currency notes recovered in the aforesaid manner by the accused persons were identified by the complainant Ramesh Jain. Meanwhile, SI Randhir Singh got a secret

information that the Marshal Jeep bearing No. HR-14-2003 was lying parked in Subji Mandi, Bahadurgarh in abandoned condition. He went there and took the jeep into possession, vide recovery memo Ex. PT and the site plan Ex. PT/1 of that place was prepared. The accused persons also made the demarcation of the place of occurrence, accordingly, site plan memos Ex. PP/1, Ex. PQ/1 and Ex. PR/1 were prepared. The accused Bijender, Dharamvir, Jitender and Jasbir also made the demarcation of the place of occurrence and demarcation memos Ex. PV, Ex. PW, Ex. PX and Ex. PY, respectively, were prepared.

The pistol, recovered from Jasbir, was got tested from Rattan Singh, Armourer who found the pistol in working order and the cartridges were found as alive. Sanction of the District Magistrate for the prosecution of Jasbir was also obtained. After the completion of investigation, the accused Ved Parkash, Bijender, Jitender, Dharamvir and Jasbir were challaned. Accused-Suredner @ Nitu could not be arrested and was declared as proclaimed offender.

Finding a prima-facie case, accused were charged for committing offences punishable u/s 392/395/397/398 IPC and 25 of the Arms Act to which they pleaded not guilty and claimed trial.

However, on 22.08.2001, ASI Om Parkash arrested Surrender-accused also and on interrogation he made the disclosure statement Ex. PBB stating inter-alia that he was paid an amount of Rs. 5,000/- by Bijender out of which he had spend Rs. 350/- and the balance amount of Rs. 4650/- had been kept concealed by him inside his house and and could get the same recovered. He got the same recovered from the stated place and it was taken into possession, vide recovery memo Ex. PCC. He also demarcated the place of occurrence, vide demarcation memo Ex. PDD. On 24.08.2001, supplementary

challan against Surrender was presented in the court and it was committed to the court of Sessions on 06.09.2001 and so the charge for the aforesaid offences was framed against all the accused.

After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence.

After hearing counsel for both the parties and appraising the entire evidence and material coming on record Sh. D. D. Yadav, the then Ld. Additional Sessions Judge (Adhoc), Jhajjar recorded the impugned judgment of conviction dated 07.04.2004 and order of sentence of the even date whereby accused Ved Parkash, Jitender @ Pintu, Bijender @ Vijay, Dharamvir @ Chautala and Surrender @ Nitu were sentenced to undergo RI for 3 years and to pay a fine of Rs. 3000/- with default clause whereas accused-Jasbir was acquitted.

Feeling aggrieved by the aforesaid judgment and order, accused-appellants Ved Parkash, Bijender @ Vijay and Jitender @ Pintu have come up in this appeal before this court.

I have heard Mr. Sanjeev Kodan, Advocate for appellant No. 1; Mr. Rajbir Sehrawat, Advocate and Mr. Sanjeev Kadian, Advocate for appellants No. 2 and 3 and Mr. Munish Dev Sharma, AAG, Haryana for the state of Haryana besides appraising the entire material coming on record.

Though the learned Trial Court recorded the finding that no offence of dacoity is made out against the accused of this case, yet, they were convicted for the offence punishable under Section 412 IPC. The learned Trial Court observed that the amount recovered from Ved Parkash, Bijender, Jitender and Dharamvir on the very next day of occurrence was heavy amount. Bijender

also got recovered further amounts on 17.01.2001 and 22.01.2001 as well. As the amount recovered is quite heavy, therefore, this fact itself gives credibility to the prosecution case. So the recovery mentioned from the aforesaid persons stands established. It was further observed that as the recovery was heavy and it was effected on the next day of occurrence, so it establishes that the accused must have knowledge or had reason to believe that the property was transferred by commission of dacoity.

Thus, from the above, it is evident that the prompt recovery of the loot money and further that the recovery was quite heavy, it weighed the mind of the trial court in holding them guilty for committing offence punishable under Section 412 IPC.

For the application of Section 412 IPC, it is necessary for the prosecution to prove;

1. That the property in question was stolen property;
2. That the possession of such property was transferred by the commission of a dacoity;
3. That the accused retained or received such stolen property.

Section 412 requires that the receiver should know or have reason to believe that the property has been transferred by commission of a dacoity.

In the case in hand, the essential ingredients of Section 412 are not fulfilled. As per the case of the prosecution, the loot money i.e. Rs. 9,15,000/- was belonging to Ramesh Jain, complainant, who appeared as PW-1. This witness did not support the prosecution story at all i.e. on the point of identity of the accused, who committed the offence of dacoity and the recovery of aforesaid currency notes and their identification by him. Thus, in fact, there is

no evidence on file to show that the amount allegedly recovered from the possession of the accused-appellants was belonging to PW-1 Ramesh. Unless prosecution proves the ownership of the currency notes, i.e. the loot money, it cannot be said that it is stolen property. Complainant did not state that the aforesaid recovered currency notes were initialed by him at any point of time nor he deposed in the court that the aforesaid currency notes were recovered from the possession of accused-appellants and he identified the same as the one belonging to him. Even in the complaint, Ex. PA, the number of currency notes or putting of initials by the complainant at any point of time before commission of dacoity, is not mentioned. Recovered currency notes were also not sealed by the prosecution nor produced in the court. Thus, the prosecution has failed to prove the nature of the recovered currency notes as that of stolen property.

As per prosecution case, Ved Parkash is the driver of complainant Ramesh who was driving the Marshal jeep No. HR-14A-2203. At the time of commission of alleged crime, he along with complainant and Devender were made to get down from the aforesaid jeep and thereafter the dacoits decamped with the jeep as well the amount of Rs. 9,15,000/- lying in the jeep. The next day complainant expressed his suspicion that his driver was hand in glove with the dacoits. Thus, on the basis of the suspicion, he was apprehended and thereafter on interrogation he admitted the crime and got recovered Rs. 1,00,000/- in pursuance of his disclosure statement. Bijender @ Vijay and Jitender @ Pintu were also one of the dacoits who had allegedly committed this crime as per prosecution case. They also got recovered the loot money in pursuance with their disclosure statements. Thus, these three persons are not the one to whom the booty was transferred by the commission of dacoity. In fact, as per the prosecution case, they themselves were the dacoits. In case

prosecution has failed to prove the offence of dacoity against them, they cannot be held liable for the offence under Section 412 IPC as to constitute the offence of receiving stolen property there must be some proof that some person other than the accused had possession of the stolen property before the accused got possession of it. Section 412 IPC deals with the dishonest receipt or retention of stolen property, the possession of which has been transferred by the commission of a dacoity. It is the settled proposition of law that unless there exist circumstances, which clearly separates the one crime from the other, it is not right to convict a person both of the offence of dacoity under Section 395 IPC and of receiving the stolen property in the dacoity.

The star witness of the prosecution is Ramesh Jain, complainant, who appeared as PW-1. As per PW-1, though he narrated the incident regarding looting of an amount of Rs. 9,15,000/- along with vehicle Marshal jeep bearing No. HR-14A-2203 by five young persons travelling in an old Maruti car and who intercepted their vehicle at about 4.00 PM near village M.P. Majra, yet, he deposed that the accused present in the court did not deprive them of their vehicle as well as amount. He was cross-examined at length by learned Public Prosecutor. About complaint, Ex. PA, he deposed that the contents of the same were never read over to him and his signatures were obtained on blank papers. He further denied that any of the accused suffered disclosure statements, Ex. PB to Ex. PK, in his presence or in pursuance with the same got recovered the currency notes, vide recovery memos Ex. PL to Ex. PQ. He further deposed that though these disclosure statements and recovery memos bears his signatures yet the same were obtained on blank papers.

Devender son of Bhim Sain, PW-2, the salesman of complainant, was also with him at the time of alleged crime. As per prosecution case, this

witness also did not support the prosecution case at all. He stated that no occurrence whatsoever had taken place in his presence. He denied having given any statement to the police. In this case, no identification parade of the accused was got conducted. Under these circumstances, the learned trial court rightly acquitted the accused-appellants for the offence of dacoity. When the accused have not been proved to be dacoits, how could they be held guilty under Section 412 IPC, as in this case there is no transfer of loot money. Even otherwise, the statements of PW-10 Randhir Singh, Investigating Officer, PW-11 ASI Ram Phal and PW-13 ASI Sant Ram are not consistent with the prosecution case. Though these witnesses have deposed about making of disclosure statements by the accused-appellants and getting the recovery of loot money effected in pursuance with their disclosure statements, yet, their statements are discrepant.

As per prosecution case, Ved Parkash-appellant gave disclosure statement, Ex. PB, to the effect that Bijender @ Vijay gave a sum of Rs. 1,00,000/- out of loot money to him by coming to his house. Those currency notes were of the denominations of the 100 and those were in 10 wads. The same were kept by him in a polythene bag and then kept concealed by him under the cloth lying in the almirah of his house. PW-10 Randhir Singh, Investigating Officer of the case, deposed that appellant-Ved Parkash suffered disclosure statement Ex. PB stating that he was also involved in the incident and further that Rs. 1 Lac which fell to his share were lying at his residence at village Dawla and he can get the same recovered. He further deposed that he got the same recovered from his house and those currency notes were of the denomination of Rs. 50. Those were containing the signatures of complainant Ramesh and he identified the same. There is nothing in the complaint Ex. PA that the looted currency notes were bearing his signatures and even the

denomination of the same also does not find mention. Currency notes have not been produced in the court nor the same were sealed at the spot. The denomination of recovered currency notes is also not in consonance with the one mentioned in the disclosure statement Ex. PB. Thus for this reason, it cannot be said that Ramesh-complainant, was in a position to identify the recovered currency notes as the one belonging to him. Above all, Ramesh as PW-1 categorically stated that the accused did not suffer any disclosure statement in his presence nor got recovered any amount. As such question of identification of the recovered money is not there. PW-10 ASI Randhir Singh, Investigating Officer, however, deposed about the disclosure statement of Jitender, accused-appellant, stating that he made disclosure statement Ex. PE and got recovered an amount of Rs. 50,000/- from a bag lying under the cot and the same were taken into police possession, vide memo Ex. PN. Thus, this witness did not depose in detail as to what disclosure statement accused Jitender suffered. Further as per disclosure statement of accused Jitender which is Ex. PE he had kept hidden Rs. 50,000/- currency notes, in between empty gunny bags lying under the cot which was lying in the room of the house. PW-10 did not depose about the aforesaid place of recovery. He deposed that recovery was got effected by the accused Jitender from a bag lying under the cot. He did not depose that the aforesaid recovered amount was identified by Ramesh-complainant as the one belonging to him. ASI Ram Phal, PW-11, also did not depose a single word about identification of recovered currency notes by Ramesh-complainant. Even otherwise, I have already discussed above that there is no mark of identification of currency notes alleged in the complaint. Number of currency notes had also not been given in the complaint nor the recovered currency notes were sealed nor produced in the court. As such in the

absence of the same it cannot be said that the allegedly recovered currency notes were duly identified by Ramesh-complainant as the one belonging to him. For the aforesaid reasons, in fact in this case, there is no identification of the allegedly recovered currency notes.

Likewise, as per disclosure statement of Bijender @ Vijay, Ex. PC, he kept concealed Rs. 3,17,000/- which fell to his share, after putting the same in a *Gatta* box meant for Bidis under the earth and straw lying in the *Khor* meant for the cattle in his house. Whereas per PW-10, Investigating Officer of the case, he got recovered the aforesaid amount from underneath the ground in the cattle shed of his house. This very accused also suffered disclosure statement Ex. PF. As per prosecution case, Bijender-accused disclosed that he had kept hidden the aforesaid amount underneath the cloth in a corner of the room beside *Gandassa* of his residential house. Whereas so was not stated by PW-10 when appeared as witness. He even did not mention in detail as to what disclosure statement was actually suffered by this accused. Even specific place of recovery was not mentioned. Likewise is the discrepancy in the statement of PW-10 ASI Ram Phal from the prosecution case regarding disclosure statement Ex. PJ and recovery in pursuance of that disclosure statement.

ASI Ram Phal did not state that the amount of Rs. 50,000/- got recovered by accused Jitender and the amount of Rs. 3,17,000/- got recovered by accused Bijender @ Vijay were also identified by Ramesh-complainant as the one belonging to him. He also did not depose about the identification of the amount of Rs. 33,000/- which was allegedly got recovered by Bijender @ Vijay. PW-13 ASI Sant Ram deposed about the recovery of Rs. 2,60,000/- by Bijender @ Vijay-accused in pursuance with the disclosure statement. But he did not depose that as to what disclosure statement he gave further on the point of

identification of currency notes as well. Hence, it cannot be said that prosecution could successfully prove the same.

It is the settled proposition of law that where the accused found in possession of some property alleged to have been looted which has no identification; accused cannot be convicted under Section 412 IPC. It is also the settled proposition of law that where complainant and independent witness to recovery of stolen articles from possession of accused turned hostile, conviction of accused under Section 412 IPC solely on the basis of statement of Investigation Officer cannot be sustained. To prove charge under section 412 IPC, it is incumbent for the prosecution to prove that the looted articles were seized from the accused and that the same were duly identified by the complainant.

In the case in hand, the prosecution has failed to prove that the alleged recovered currency notes were duly identified by the complainant.

For the aforesaid reasons as the prosecution has failed to bring home guilt against accused for committing offence punishable under Section 412, therefore, finding merit in this appeal, the impugned judgment and order on sentence dated 07.04.2004 are ordered to be set aside. This appeal is accepted. Accused-appellants are acquitted of the charge for which they faced trial.

(Raj Rahul Garg)
Judge

27.07.2015
Waseem

