

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

**CRA-S-23-SB of 2010
Date of Decision: 10.03.2015**

BHIM SINGH AND OTHERS

..... Appellants

VERSUS

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr. Vikram Singh, Advocate
and Mr. Rahul Vats, Advocate
for the appellants.

Mr. Munish Dev Sharma, AAG, Haryana.

M. JEYAPPAUL J. (ORAL)

Accused Bhim Singh @ Bheela @ Bhima, Satish Kumar, Randhir Singh @ Ranga and Amandeep @ Nanga have challenged the conviction and sentence passed by the trial Court under Sections 394 and 397 IPC read with Section 34 IPC, Section 25 of the Arms Act and Section 141 of the Railways Act, 1989.

It is the case of the prosecution that all the four accused having boarded the train at Karnal railway station on 06.05.2009, picked up a quarrel with some passengers and later on attacked PW1-Surender Mann with a knife and committed robbery of sum of Rs.5000/-.

PW1-Surender Mann has lodged the complaint, Exhibit PA, setting out the sequence of the crime committed in the train. He has deposed that on 06.05.2009 at about 03.00 a.m, when the train halted at the railway station, Karnal, about six youths boarded the train and picked up a quarrel with some passengers. Accused Satish Kumar attacked PW1-Surender Mann with a knife and caused injury. Thereafter, the accused looted a sum of Rs.5000/- from the possession of PW1-Surender Mann at knife point.

On 10.05.2009, PW1-Surender Mann visited village Dikadla along with the police officials and identified accused Satish Kumar.

PW4-Head Constable Raj Kumar has stated that on 11.05.2009, accused Satish Kumar and Bhim Singh were subjected to interrogation by the Investigating Officer. Accused Satish Kumar suffered disclosure statement. On the basis of the admissible portion in his disclosure statement, currency notes worth Rs.2,300/- were recovered, although from the said amount only a sum of Rs.2000/- pertained to the present case. A sharp edged knife (ustra) was also recovered at the instance of accused Satish Kumar. He also deposed that accused Bhim Singh @ Bheela @ Bhima also suffered disclosure statement, based on which, a sum of Rs.2300/- was recovered at his instance.

PW5-Head Constable Darya Singh and PW6-SI SHO Ram Murti have spoken about the disclosure statement suffered by accused Randhir Singh @ Ranga and recovery of Rs.500/- from accused Randhir Singh @ Ranga based on the disclosure statement suffered by him.

PW9-Inspector Gurudutt spoke about the disclosure statement suffered by Amandeep @ Nanga and the recovery of Rs.200/- at his instance.

The accused set up a plea in their respective statements under Section 313 Cr.P.C. that they were innocent but were falsely implicated in the present case.

The trial Court having placed reliance upon the above evidence on record, returned a verdict of conviction as stated supra.

The learned counsel appearing for the appellant would vehemently submit that there is no legal evidence adduced by the

prosecution against accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga, but unfortunately the trial Court having placed reliance upon the disclosure statement suffered by accused Satish Kumar and the other accused, chose to record conviction as against them. He would further submit that there is a vital contradiction as regards the exact amount recovered from accused Satish Kumar. He would also submit that there was no other evidence to corroborate the testimony of PW1 Surender Mann. Therefore, it is his submission that all the accused are entitled to acquittal.

Per contra, the learned State counsel would submit that the evidence of PW1-Surender Mann clearly establishes the robbery committed by the accused at knife point. He would also submit that PW1-Surender Mann had sustained injury in the occurrence at the hands of accused Satish Kumar and therefore, his evidence cannot be simply ignored by this Court. He would also submit that the disclosure statements suffered by accused Satish Kumar and the disclosure statements suffered by respective accused followed by the recovery would go to establish the participation of the other accused in the robbery committed in the train.

Let me first take up the charges levelled against accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga. The evidence of PW1-Surender Mann is very much relevant to decide the charges framed as against the above three accused. PW1-Surender Mann has categorically deposed that accused Bhim Singh @ Bheela @ Bhima, during the course of interrogation by the police officials denied his involvement in the present occurrence. He has also further deposed that he could not say with certainty that all the accused present in

Court were involved in the incident of robbery in the train. He could not identify any other accused except accused Satish Kumar as the one who caused injury and robbed him.

The star witness PW1-Surender Mann has not deposed about the involvement of the other accused, except accused Satish Kumar. There is no reason to disbelieve his testimony.

PW4-Head constable Raj Kumar, of course speaks about the disclosure statement suffered not only by accused Satish Kumar but also by Bhim Singh @ Bheela @ Bhima. He comes out with a contradictory statement as regards the quantum of currency notes recovered from accused Satish Kumar and Bhim Singh @ Bheela @ Bhima. PW1-Surender Mann has deposed that a sum of Rs.4,500/- out of Rs.5,000/- robbed from him was recovered from accused Satish Kumar. But unfortunately PW4-Head Constable Raj Kumar comes out with a version that only a sum of Rs.2000/- in connection with this case was recovered from accused Satish Kumar. He would also depose that a sum of Rs.2,300/- was recovered from accused Bhim Singh. The alleged recovery of sum of Rs.2,300/- from Bhim Singh as per the evidence of PW4 is found not consistent with the recovery from accused Satish Kumar spoken to by PW1-Surender Mann. If a sum of Rs.4,500/- out of Rs.5000/- was already recovered from accused Satish Kumar as per the evidence of PW1-Surender Mann, the recovery of Rs.2,300/- shown from accused Bhim Singh is found to be little confusing.

Coming to the evidence of PW5-Head Constable Darya Singh, it is found that he deposed that a sum of Rs.500/- was recovered from accused Randhir Singh @ Ranga from his house. PW9-Inspector Gurudutt speaks about the recovery of Rs.200/- on the basis of disclosure statement

suffered by accused Amandeep @ Nanga.

The recovery of the above amount has been reportedly made from the house of the respective accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga. Further such an amount recovered from the above three accused did not tally with the amount allegedly looted from the possession of PW1-Surender Mann. No other witness was examined to speak about the robbery committed from any other passengers in the train.

The Hon'ble Supreme Court in ***Haricharan Kurmi Vs. State of Bihar 1964 AIR(SC) 1184*** as held as follows:

“As we have already indicated, this question has been considered on several occasions by Judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against other accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the Court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right”.

In the instant case, the prosecution has largely relied upon the disclosure statement suffered by the co-accused Satish Kumar to rope in the other three accused and not an extra judicial confession. In other words, except the reference made by accused Satish Kumar in the disclosure statement made by him as regards the role of the other three accused, there is no substantial evidence available on record as against them. It is a well settled position of law that only that portion of information in the disclosure statement which lead to recovery of new fact alone is admissible in evidence. Therefore, the above decision will not apply to the facts of this case.

Coming to the recovery from the above three accused, I find that it cannot be the sole basis to record conviction as against them. Further, it is found that there is a material contradiction as regards the quantum of currency notes recovered from the above three accused. These small amounts would have been earned and kept by the respective accused in their house. Therefore, such a recovery would not lead to an inference that those amounts have connection with the robbery committed in the train.

For all these reasons, I am of the considered view that the prosecution has miserably failed to establish beyond reasonable doubt that accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga committed the offences charged as against them.

Coming to the role of accused Satish Kumar, I find that PW1- Surender Mann, an injured at the hands of accused Satish Kumar, has categorically deposed that accused Satish Kumar attacked him with a knife and robbed him of Rs.5000/- in his possession. He had identified accused Satish Kumar on 11.05.2009 itself as the person who caused him injury and

robbed him of a sum of Rs.5000/- in his possession. That apart, when he was examined before the trial Court on 29.09.2009 within a span of about 4 ½ months, he could recollect from his memory the involvement of the accused and pointed his finger towards accused Satish Kumar as the person who not only caused injuries to him but also robbed a sum of Rs.5000/- in his possession. Such a testimony of PW1-Surender Mann, who suffered injury in the occurrence, cannot at all be discarded by the Court of law. In my view, the trial Court has rightly relied upon the evidence of PW1-Surender Mann.

PW1-Surender Mann and PW4-Head Constable Raj Kumar have spoken about the recovery of knife at the instance of accused Satish Kumar, based on the disclosure statement suffered by him.

It is not the number of witnesses but the quality of evidence let in by the prosecution that matters. In my view, the evidence of PW1-Surender Mann completely establishes the charges framed as against accused Satish Kumar.

In view of the above facts and circumstances, I find that the trial Court has rightly come to the conclusion, having thoroughly evaluated the evidence on record, that accused Satish Kumar caused injury to him during the course of committing robbery armed with a knife and committed robbery of sum of Rs.5000/- as well in the possession of PW1-Surender Mann. Therefore the trial Court has rightly convicted accused Satish Kumar for the offences under Section 394, 397 of the Indian Penal Code, Section 25 of the Arms Act and Section 141 of the Railways Act. As the offence was committed from the passengers in the train, in my view, the sentence also has been rightly imposed by the trial Court as against accused Satish

Kumar. Therefore, the appeal qua accused Satish Kumar stands dismissed. Finding that the prosecution has failed to establish the charges as against the other accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga they are acquitted of all the charges framed as against them. They be set at liberty forthwith if their custody is not required in connection with any other case. As a result, the appeal qua accused Bhim Singh @ Bheela @ Bhima, Randhir Singh @ Ranga and Amandeep @ Nanga stands allowed.

March 10, 2015
Rittu

(M. JEYAPPAUL)
JUDGE