

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA No. S-505-SB of 2010(O&M)

Date of decision: 14.01.2015

Sehjad

.....Appellant

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr. Rohan Sharma, Advocate for
Mr.Vikram Singh, Advocate for the appellant
Mr.Anil Mehta, DAG Haryana

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Sehjad appellant who is presently confined in District jail Gurgaon has filed this appeal against the judgment and order dated 3.2.2010/ 5.2.2010, passed by the learned Additional Sessions Judge-III, Bhiwani vide which he was convicted under Section 395 IPC and sentenced to undergo RI for ten years and pay fine of Rs.3000/-, in default thereof, to undergo further SI for period of two months.

Mahabir Singh made a complaint (Ex.PJ) dated 22.7.2007 before SHO Police Station City Dadri. In the statement, Mahabir Singh has stated that he is running the business of transport and owns six trucks. He has employed nine drivers. On 21.7.2007, at night he parked his trucks bearing registration No.HR-61A-3428 and

HR-39B-3428 on the road in front the Senior Secondary School, Jharu Singh Chowk. At about 9.00 p.m. he slept in Truck No.HR-61A-3428. At about 12.00 midnight, five youth came in one white colour pick up van which was not having any number plate. They came on both the sides of window of the truck and came inside. They told the complainant that they are criminals and that whatever is in his possession it should be handed over to them. The complainant had a scuffle with them. Thereafter, the said assailants put the pistol on the chest of the complainant and one of the assailants started the truck and the truck followed the pickup van. When they reached near Jhajjar vally, he tried to raise an alarm on which he was pushed down and asked on pistol point to remain silent. The assailants also hit the butt of the pistol on his forehead. Two of the assailants were speaking in Mewat dialect and three were speaking in Rohtak dialect. In the way, they also took out Rs.10000/- from his rear pocket of his trousers on pistol point and then took the van and truck on Makrani-Khorda road. There the complainant with his hand tied was made to alight from the truck. He was taken to the nearby fields and then he was tied with the tree with the help of the rope picked up from the truck. Thereafter, the pickup van and truck were taken to Khorda village side. The complainant could not get himself free. At about 6.00 a.m., the owners of the field, namely, Kanwarbhan, Sombir and Manjeet came there and freed the complainant. Then the complainant went to his house and narrated the entire occurrence to his brother Satbir. Thereafter, when the complainant was going to police station, he met the police party near Rohtak Chowk, where his

statement was reduced in writing. On the basis of his statement, formal FIR (Ex.PJ/1) was registered.

On 22.7.2007, the police party visited the place where complainant was tied with the tree and took into possession *Parna* and rope vide recovery memo (Ex.PM).

On 10.8.2007, accused Asamdeen and Safrudeen were apprehended and subjected to interrogation.

On 2.11.2007, the present appellant/accused Sehjad was arrested. He suffered disclosure statement (Ex.PE), in which, he disclosed the details about the occurrence. Subsequently, on 3.11.2007, he again suffered disclosure statement (Ex.PF), in which he again gave details about the occurrence and stated that the truck was sold to one Zakir Hussain for ₹ one lac and that ₹10,000/- fell to his share, which he spent.

On the same day, the accused Sehjad led the police party to the place of occurrence and also to the place where the complainant was tied with the tree and identified said place regarding which memo (Ex.PG and Ex.PH) were prepared. Site plan of the place of occurrence was also prepared.

During the course of investigation, the truck in question was found impounded by Regional Transport Authority, Pilibhit and was found parked in police post of Lalori PS Jahanabad (UP). The same was taken into possession on 24.8.2007 through recovery memo (Ex.PQ). It was found that the engine number was correct but the chasis number was erased and new number was engraved on it.

Accused Asamdee and Safrudden became proclaimed

offenders during trial on 29.9.2008. The remaining accused were also declared proclaimed offenders and ultimately only Sehjad faced the trial.

In support of its case, the prosecution examined Balbir Singh HC (PW1), Dr.Ishwar Singh (PW2), Satbir (PW3), Ram Niwas, SI retired (PW4), retired ASI Rajpal (PW5), Uma Shyankar ASI (PW6), Mahabir (PW7), Kanwar Bhan (PW8), ASI Sisan Pal (PW9), Naresh Kumar EHC (PW10), Inspector/ SHO Hira Singh (PW11), Rajpal Inspector (PW12), Garish Kumar Draftsman (PW13). Pws E/ASI Suraj Bhan and Ram Niwas ASI were given up being unnecessary by the PP for the State vide his statement recorded on 21.8.2009, PW Constable Vijay was given up as unnecessary by the PP for the State vide his statement recorded on 27.10.2009, Pws HC Raj Kumar and ASI Ram Niwas were given up being unnecessary by the PP for the State vide his statement recorded on 17.11.2009. Thereafter, the State has closed the prosecution evidence on 8.1.2010.

When examined under Section 313 Cr.P.C. the accused denied the evidence led against him and pleaded that he is innocent. Accused did not lead any evidence in defence.

After hearing learned Public Prosecutor for the State, learned counsel for the accused and going through the file, the learned Additional Sessions Judge, Bhiwani convicted and sentenced the accused under Section 395 IPC and sentenced him aforesaid.

I have heard learned counsel for the parties and have also carefully gone through the file.

The complainant Mahabir Singh while appearing as PW7 has reiterated the prosecution story as stated above which need not to be repeated over again. During examination-in-chief, he stated that the accused present in Court is one of those persons who were involved in the crime. In this way, Mahabir Singh identified the accused in Court for the first time. Kanwar Bhan (PW8) proved that he had found the complainant tied with the tree and had untied and freed him. Retired ASI Rajpal (PW5) proved the disclosure statements of Sehjad (Ex.PE) and (Ex.PF). I am of the view that the statements about the disclosure of the manner of crime and confessing the crime are not admissible in evidence. No recovery in consequence of those statements was effected. Inspector Rajpal (PW12) who had produced Sehjad after obtaining production warrants from the Court at Dadri has stated in his statement about the disclosure statements made by the accused. However, in cross-examination, he admitted that no recovery was effected from the accused and that both the places of occurrence were already within the knowledge of the police. In this way, identification of the place of crime and the place where the complainant was tied with the tree were already within the knowledge of the police. There is nothing on file to show as to from whom the truck was taken into possession and impounded by Regional Transport Authority, Pilibhit. In this way, it comes out that no recovery was effected from the present appellant.

Now, when the evidence of the prosecution is scanned, it comes out that the evidence against the present appellant is as

under:

- (1) his identification by the complainant in the Court and
- (2) Identification of both the place of occurrence by the appellant.

It is to be noted that the investigating officer has not stated even a single word as to how he came to know that present accused is involved in the crime of robbery of truck and the money from the complainant. He was simply taken into custody by obtaining production warrants.

Now, the question would arise whether the mere identification in Court is sufficient to hold the accused guilty. I am of the view that in this case no test identification parade was held. The complainant had remained with the assailants for quite some time. When Sehjad was taken into custody on production warrants, no request was ever made to the Court for holding test identification parade. In the FIR, even the vague description of the present appellant is not mentioned. Five assailants are mentioned as the persons, out of which two were stated to be speaking in Mewat dialect and three Rohtak dialect. In the absence of any description of the assailants in the FIR which could fit into the description of the present appellant/accused, it cannot be said that it is proved that the appellant was one of those five persons involved in the robbery. In these circumstances, identification of the appellant in Court cannot be relied upon and is considered insufficient to hold him guilty.

Now next comes to identification of place of crime by the accused Sehjad on 3.11.2007. The statement of Inspector Rajpal (PW12) clearly shows that these places were already within the

knowledge of the police. Therefore, identification of these places by the accused loses its significance and is not sufficient to hold that the accused was involved in the crime. In this case, the truck was not recovered from the accused. In fact, the police did not make any scientific investigation in the case. When the truck was recovered on 24.8.2007 i.e. only one month after the crime, no effort was made to take finger prints from the truck. No effort was made to locate the person from whom the truck was taken into possession by Regional Transport Authority, Pilibhit so as to prove that the accused had sold the truck to the said person as disclosed by him in his disclosure statement. In fact, there is nothing on file to show that as to from whom and how Regional Transport Authority, Pilibhit took the stolen truck into possession.

It being so, the evidence produced against the accused is not sufficient to hold him guilty. Consequently, the appellant/accused is granted benefit of doubt and is acquitted of the charges framed against him. He be released forthwith, if not required in any other case.

14.01.2015*gk***(Kuldip Singh)
Judge**