

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-S-2144-SB-2003
Date of decision : 28.01.2015

Man Singh and others

... Appellants

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Anil Malik, Advocate
for the appellants.

Mr.Rajesh Gaur, Addl. A. G.Haryana.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 25.09.2003 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Faridabad whereby the appellants have been convicted and sentenced for commission of offence punishable under Section 392 of the Indian Penal Code (in short 'IPC'), extracted hereinbelow:-

Name of Convict	Under Section	Sentence (R.I.)	Fine(in Rs.)	In Default (R.I.)
Ram Hari	392 IPC	5 years	3000/-	6 months
Manbir	392 IPC	5 years	3000/-	6 months
Man Singh	392 IPC	5 years	3000/-	6 months

The facts relevant for disposal of the present appeal are that on 20.11.1997 Ram Avtar (PW1), working as a Kiryana Broker got recorded his statement that on that day, he was accompanied by Rajesh Kumar and had gone to Bhikam Colony, on scooter, for collecting money from the

house of Ramesh Chand. All his customers were present there and he collected an amount of Rs.1,75,000/-. He requested Rajesh to drop him at Railway Station, Ballabhgarh as he was to go to Delhi. At about 11 AM, he and Rajesh reached Tigaon Road, three persons came on a scooter and hit the scooter driven by Rajesh. After giving beatings to him, Ram Hari, Manbir and Man Singh snatched his green colour bag containing Rs.1,75,000/- and ran towards Tigaon side.

On the basis of statement of the complainant, formal FIR Ex.PA/2 was recorded by ASI Laxmi Narayan. SI Bishamber Dayal inspected the spot, prepared rough site plan Ex.P1 of the place of occurrence, recorded statement of Rajesh on 14.04.1998 and added offence under Section 392 IPC. On 07.05.1998, Ram Hari, Bhopal, Man Singh, Sukhbir, Sudhan and Manbir were arrested by SI Anoop Singh, CIA Faridabad. They were interrogated and their disclosure statements were recorded. Accused Jafru was arrested on 21.06.1998. On completion of investigation, challan was presented in the Court for commencement of trial.

After due compliance with the provisions of Section 207 Cr.P.C., the case was committed to the Court of Sessions as offence under Sections 395 and 397 IPC being exclusively triable by the said Court.

Charge under Sections 392, 395, 397 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

To prove its case, prosecution examined as many as five witnesses namely Ram Avtar complainant PW1, Sh. R.K.Saini, Additional Sessions Judge, Gurgaon PW2, SI Bishamber Dayal, Investigating Officer PW3, SI Laxmi Narayan PW4 and SI Anoop Singh PW5.

On evidence of the prosecution being closed, statements of accused under Section 313 Cr.P.C. were recorded through which they denied incriminating circumstances put to them and pleaded their innocence and false implication. However, they did not adduce any evidence in defence.

On appreciation of evidence adduced by the prosecution and rival submissions made by counsel for the parties, the trial Court held the appellants guilty of offence punishable under Section 392 IPC but they were acquitted of the charge under Sections 395/397 IPC. Their co-accused namely Bhopal, Sudhan, Sukhbir and Jafru were acquitted of all the offences.

Feeling aggrieved by the verdict of the learned trial Court, the joint appeal has been preferred by all the convicts which was admitted in the year 2003 and has now matured for hearing.

Counsel for the appellants has vehemently argued that the prosecution has failed to adduce cogent and convincing evidence to establish identity of the accused or they being author of the crime. The alleged recovery of Rs.5000/- from each of the accused by no stretch of imagination can be connected with cash amount allegedly extorted from the complainant. It is further argued that the learned trial Court has held the appellants guilty of offence under Section 392 IPC without appreciating the evidence in right perspective and while ignoring the settled principle of criminal jurisprudence that the prosecution has an obligation to prove culpability of the accused beyond shadow of reasonable doubt.

Counsel for the State has supported the judgment passed by the trial Court with the submissions that statement of the complainant is more

than sufficient to prove that offence under Section 392 IPC was committed by the accused. It is further submitted that no reason whatsoever is forthcoming for the complainant to indict the accused in the crime if they had not committed the offence.

I have heard counsel for the parties and perused the records.

The short question that falls for determination is whether statement of Ram Avtar complainant is sufficient to connect the accused with the crime, in other words, whether testimony of the complainant is sufficient to establish identity of the accused.

The complainant in the First Information Report Ex.PA has not given description of the persons who came on the scooter and snatched money from him. He simply stated that he can identify the scooter driver and the person who snatched money in case they appear before him. It is not case of the prosecution that three persons who came on the scooter were known to the complainant prior to the occurrence. During course of investigation, no identification parade was conducted to enable the complainant or his companion Rajesh Kumar to identify the culprits. Rajesh Kumar did not appear in the witness box to corroborate version of the complainant or that he chased the culprits after the occurrence. During cross-examination, the complainant stated that police had shown him accused Ram Hari, Manbir and Man Singh in CIA, Sector 8. Statement of the complainant was recorded in the Court on 26.11.2001. From the facts elicited during cross examination of the complainant, it can be safely gathered that since the accused were shown to the complainant by the police in CIA, Sector 8, the complainant identified them in the Court to be the

persons who extorted money from him. It is difficult to believe that if a person has been suddenly stopped on the way by three persons and snatch the bag containing money, the said person would be in a position to identify the culprits if they were not known to him earlier. As has been noticed hereinbefore, the complainant has not given any description of the accused to support his version that he could identify them from appearance. In this view of the matter, I am of the considered opinion that testimony of Ram Avtar complainant is not sufficient to establish identity of the accused beyond shadow of reasonable doubt.

The prosecution has put an effort to establish culpability of the accused on the basis of recovery of Rs.5000/- each in pursuance of disclosure statement made by the convicts. There is no evidence on record to connect the alleged recovery with the cash amount extorted from the complainant. It is nothing abnormal if each of the accused had an amount of Rs.5000/-.

In view of what has been discussed hereinabove, I am of the considered opinion that the prosecution has failed to establish the offence punishable under Section 392 IPC beyond shadow of reasonable doubt. The appellants are entitled to benefit of doubt and accordingly their appeal is allowed and the judgment of conviction and order of sentence passed by the trial Court are set aside. The appellants, if in custody, be set at liberty forthwith if not required in any other case.

(REKHA MITTAL)
JUDGE

January 28, 2015.
DK