

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1102-SB of 2003

DATE OF DECISION: JANUARY 6, 2016

NEELA & OTHERS

...APPELLANTS

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. R.K.AGNIHOTRI, ADVOCATE FOR THE APPELLANTS.
MR. GAURAV JINDAL, ADDL.A.G., HARYANA.

M. JEYAPPAUL, J.

1. Accused Neela, Meeta, Latta, Golu and Jhota have challenged in the present appeal the judgement of conviction and sentence passed by the trial Court under Section 395 and 397 IPC.

2. PW3 Ujjagar Nath was the priest at Markanda Temple, Mullana. PW6 Arjun Singh was serving as Sewak in the said Temple. They have deposed that on 1.3.2000, they had gone to bed after taking meals. At about 2.30 a.m., five persons with muffled faces armed with lathies and iron rod entered into the temple and woke up PW3 by giving thrust of lathi. They also started beating him. Ujjagar Nath's hands were tied and his mouth was gagged with clothes. The accused snatched his golden ring, a passport size photograph and a purse which contained an amount of ₹2600/-. Accused took PW3 to the adjoining room. They broke up the locks with the help of an iron rod and took out unstitched clothes from the box. Ramanand and Jarnail Singh were sleeping under the bridge near the temple. They were

also tied up by the accused. But Jarnail Singh successfully escaped from the spot and reached police station, Mullana and informed the police about the occurrence. On seeing the police party, accused tried to run away from the spot. Accused Neela was caught red-handed by the police. In the said process, another accused gave a danda blow on the head of PW5 Constable Chander Parkash. On receiving danda blow, PW5 fell down and all the accused ran away from the spot. Accused Neela was identified by PW3 and PW6. Accused Neela also possessed an iron rod in his hand which was recovered by the police.

3. PW6 Arjun Singh who was also sleeping in the Temple at the time of occurrence completely corroborated the evidence of PW3. PW5 Chander Parkash also spoke about the police action, the arrest of accused Neela, the injury sustained by PW3 Ujjagar Nath and the recovery of iron rod from Neela.

4. PW7 SI Puran Chand spoke about the arrest of Neela, the disclosure statement suffered by him, the arrest of accused Meeta on 3.3.2000 and arrest of accused Latta, Golu and Jhota on 8.3.2000, the disclosure statements independently suffered by them and the recovery of unstitched clothes from accused Meeta, ₹2600/- from the possession of accused Latta, an empty purse, photo of PW3, a diary and a telephone bill at the instance of accused Golu and gold ring of PW3 from accused Jhota.

5. Accused in their statements under Section 313 Cr.P.C. submitted that they were innocent, but the police have foisted a case without actually effecting any recovery from them.

6. The prosecution has established that Neela was arrested alongwith iron rod in his possession; unstitched clothes were recovered at the instance of accused Meeta; a sum of ₹2600/- was recovered on the basis of the disclosure statement suffered by accused Latta; a purse, photo of PW3, a diary and a telephone bill were recovered on the basis of disclosure statement suffered by accused Golu and gold ring of PW3 was recovered from accused Jhota on the basis of the disclosure statement suffered by him.

7. The evidence of PW3, PW5 and PW6 and PW7 completely establishes the charges under Section 395 and 397 IPC framed as against the accused.

8. Learned counsel appearing for the appellants contended that no test identification parade was conducted and therefore, the evidence of PW3, PW5 and PW6 cannot be safely relied upon. He also referred to a decision of the Hon'ble Supreme Court in **OMA @ Omprakash and another vs. State of Tamilnadu, 2013(2) RCR (Criminal) 176.**

9. In **OMA @ Omprakash** (supra), two accused who were arrested after 10 long years in a case of dacoity were not subjected to test identification parade. Therefore, the Hon'ble Supreme Court doubted the veracity of identification made by the prosecution witnesses for the first time before the trial Court.

10. It has been held in **Rajesh Govind Jagesha vs. State of Maharashtra, 1999(4) RCR (Criminal) 754** that in case where a person is alleged to have committed an offence and is not previously known to the witnesses, it is obligatory on the part of the investigating agency to hold an identification parade for the purpose of enabling the witnesses to identify

the person alleged to have committed the offence. The evidence of identifying the accused person at the trial for the first time is from its very nature inherently of a weak character. The test identification parade is considered as a safe rule of prudence for corroboration.

11. In the instant case, test identification parade was not conducted by the investigating agency as it would prove futile inasmuch as the accused had committed robbery with muffled faces. Holding Test Identification Parade associating the accused who raided the Temple in muffled faces would be an exercise in futility. The material witnesses, namely, PW3 and PW6 in the instant case, have very fairly admitted that the accused came in muffled faces. Therefore, the Court cannot find fault with lack of test identification parade in this case.

12. Learned counsel appearing for the appellants submitted that the disclosure statement was not signed by accused Neela and therefore, the same cannot be relied upon by the Court of Law.

13. In **Sucha Singh and another vs. State of Punjab, 2008(4) RCR (Criminal) 284**, a Division Bench of this Court declared that the disclosure statements alleged to be made by the accused, if not signed by them would not carry any evidentiary value under Section 27 of the Evidence Act.

14. It is true that the disclosure statement allegedly suffered by accused Neela did not contain his signature. But the fact remains that an iron rod was recovered from the person of accused Neela when he was arrested red-handed. Therefore, recovery of an iron rod from his personal possession cannot at all be doubted.

15. Further, it is found that PW7 directed investigation against the

other accused only based on the information suffered by accused Neela. Though the disclosure statement suffered by accused Neela cannot be read in evidence as it was not signed by him, the fact that PW7 tracked down accused Meeta, Latta, Golu and Jhota on the basis of the identification made by accused Neela before PW7 cannot be ignored by the Court of Law. Further, accused Meeta, Latta, Golu and Jhota had independently made disclosure statements which led to recovery of the material objects as detailed above. Therefore, accused Meeta, Latta, Golu and Jhota cannot walk away from the charges just because they were not identified by the material witnesses as they were in muffled faces at the time of committing the crime. The recovery made from them and identification of those material objects by PW3 and PW6 completely connect accused Meeta, Latta, Golu and Jhota to the charges under Section 395 and 397 IPC framed as against them.

16. It was submitted by learned counsel for the appellants that no independent witness was joined for the purpose of recovery of the material objects. There is no prescription of law that independent witness should be associated for effecting recovery. Only as a matter of prudence, independent witnesses are associated. When the testimony of official witnesses passes the test of credibility, the recovery cannot be doubted just because independent witness was not associated.

17. It was further submitted by learned counsel appearing for the appellants that looted articles are easily available in the market and that therefore, the articles recovered cannot be connected to the accused.

18. Personal effects of PW3 had been recovered from the accused.

Further, PW3 and PW6 have squarely identified the articles recovered from the accused. Therefore, the availability of those articles in the market does not throw doubt on the recovery made by the investigating agency.

19. The witnesses have come out with a slight variation as regards the time of occurrence. I find that the occurrence had taken place during mid of night. PW3 and PW6 had not noted down the timing. They have come out with an approximate time of occurrence. Therefore, such a slight variation as regards the time of occurrence given out by the witnesses does not create any dent in the case of the prosecution.

20. Learned counsel appearing for the accused submitted that about 8 police officials had descended on the scene of crime but none had opened fire.

21. It is true that no police official had thought it fit to open fire in spite of the fact that accused had started running. But the very fact that accused Neela was apprehended by the police at the spot itself and that PW5 Constable Chander Parkash had sustained injury at the hands of one of the accused does not throw doubt on the presence of the police party at the scene of crime.

22. It was lastly submitted by learned counsel appearing for the appellants that Jarnail Singh who passed on the information to the police was not examined by the investigating agency. It is not the number of witnesses, but quality of evidence that matters. Further, Jarnail Singh was not an eye witness who lodged any complaint setting the law in motion. Of course, he alerted the police party to enable them to descend on the crime scene, arrest one of the accused and record statement of PW3 which set the

law in motion. Therefore, non-examination of Jarnail Singh does not loom large in this case.

23. In the above facts and circumstances, I am of the considered view that the trial Court has rightly evaluated the evidence on record and come to a conclusion that the accused-appellants committed the offences punishable under Section 395 and 397 IPC. Therefore, the appeal fails and it stands dismissed.

24. The accused-appellants are on bail. Their bail bond stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Ambala who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Ambala shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

January 6, 2016
Gulati

(M. JEYAPPAUL)
JUDGE