

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

**CRA-S-2610-SB of 2011 (O&M)
DATE OF DECISION :- January 06, 2016**

Gurmeet

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

Present:- Mr. S.S. Rana, Advocate for the appellant.

Mr. Ashok Mutneja, Deputy Advocate General, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Gurmeet and Rocky jointly preferred the present appeal aggrieved by the conviction and sentence passed by the trial Court under Sections 328 and 392 of the Indian Penal Code.

2. Accused Gurmeet had died and as a result, the appeal qua Gurmeet abated as per the order passed by this Court on 21.2.2014. Accused Rocky has filed CRM No. 23492 of 2015 under Section 427 Cr.P.C. praying for ordering the sentence imposed in the present case to run concurrently with F.I.R. No. 170/08 dated

27.8.2008, Police Station Beas Malok, Bikaner (Rajasthan) and the sentence imposed in F.I.R. No. 137/08 ST (54/11) Police Station Sadar, Palli (Rajasthan).

3. PW3 Mamu Ram is the complainant in this case. He has deposed that on 7.9.2008 he was driving Innova Car No. HR-07K-8881 from Delhi domestic Airport to Kurukshetra and halted at Panipat and took a cup of tea. When he started his Innova Car after taking tea, accused Gurmeet and Rocky gave a signal to take lift. They informed PW3 that they have proposed to go to Pipli. PW3 took them to Pipli but the accused made a request to drop them at Shahabad. As per their request, he started driving for Shahabad. When he reached a turning point at Shahabad, Barara road, accused snatched the key of Innova Car. One of them gave blow on his head and another one caught hold of him by his neck. Thereafter they tied his hands and legs. Both the accused put one tablet in his mouth and poured water in his mouth. He was under sedation. Thereafter they threw him in Maize fields near village Dadlu. He regained his consciousness and reached his village Dadlu and made a telephonic call to his owner Jitender Dhingra. Accused took away his wrist watch, cash amount of ₹1000/- and one mobile phone.

4. PW5 ASI Richhpal Singh got secret information on 10.10.2008 that two young persons were changing the number plate of Innova Car in village Pucca Morawal and that they were also having one 12 bore DBBL gun. On the basis of the above information

he sent ruqa to Police Station Sadar Faridabad. F.I.R. (Ex.P1) was registered. He proceeded along with the police officials and arrested accused Gurmeet and took into possession one Innova Car bearing Registration No. PB-08K-8093 and R.C. of vehicle no. HR-07K-8881. PW8 Head Constable Shyam Singh deposed that in his presence SI Gurdoyal Singh took into possession one Innova Car bearing registration no. HR-07K-8881 along with its R.C. from MHC Jagdev Singh Police station Sadar, Faridkot under recovery memo Ex. P16 on 13.10.2008. On 16.10.2008, he joined the investigation. ASI Nand Lal interrogated accused Gurmeet and obtained his disclosure statement.

5. PW14 ASI Babu Ram deposed that on 29.9.2009 accused Rocky was produced before the learned Illaqa Magistrate. He was interrogated and his disclosure statement was recorded. On the basis of the disclosure statement made by him, driving license of the complainant Mamu Ram was recovered from the house of accused Rocky.

6. Accused Rocky contended in his statement under Section 313 Cr.P.C. that he was innocent but he was falsely implicated.

7. PW3 Mamu Ram was the driver of the Innova Car which was later recovered from accused Gurmeet. He has categorically deposed that accused Rocky also joined accused Gurmeet in seeking lift. Both the accused administered some tablet in his mouth

and as a result of which he became unconscious. After throwing him out, the car along with his wrist watch, mobile phone and cash amount of ₹1000/- were taken away by the accused.

8. It is true that no identification parade was conducted by the investigating official but PW3 identified the accused Rocky in the Court. The evidence of PW12 and PW14 goes to establish that accused Rocky on arrest was interrogated and the driving license of PW3 Mamu Ram was recovered from his house.

9. Learned counsel appearing for accused Rocky submitted that the name of accused Rocky did not find a place in the F.I.R. Accused were not known to PW3. Therefore, test identification parade should have been conducted. He also cited a decision of the Hon'ble Supreme Court of India in **Dana Yadav @ Dahu and others versus State of Bihar 2002(4) R.C.R (Criminal) 314** to bring home the point that when the accused was not known to the eyewitness and the name of the accused did not figure in the F.I.R., test identification parade should have been conducted.

10. Learned State counsel submitted that accused Rocky had travelled along with PW3 for about two hours. Therefore, there was no necessity to hold any test identification parade.

11. As rightly pointed out by the learned State counsel, accused Rocky has exposed himself to PW3 for about two long hours. Human memory is not that weak to erase the figure captured by it continuously for two hours. Further, it is a well settled

proposition of law that identification of an accused in the test identification parade is not a substantial piece of evidence. It is only the identification made by the witness during the course of trial that is material for determining the case. I am of the view that PW3 could have easily recalled the physical features of accused Rocky who accompanied him for two long hours in the car driven by him., Further, the human memory which captured a violent event is not subject to erasement of the memory at a short time. Therefore, in my considered view, there was no necessity for conducting any test identification parade in the above facts and circumstances. Even otherwise, the identification of accused by PW3 in the Court during trial inspires confidence.

12. Learned counsel appearing for accused Rocky pointed out that PW3 has given the age of accused in the range of 35-40, whereas the age of Rocky was only 23 years at the time of occurrence.

13. The First Information report discloses that both the accused were wearing Kurta-Payajama. During night it might not have been possible for PW3 to arrive at the exact age of the accused. Further, he has given only the approximate age. Gurmeet Ram was 34 years at the time when he was arrested. No birth certificate was produced by Rocky to establish that he was 23 years at the time when he was arrested. At any rate, the identification of accused Rocky by PW3 does not provide any room for doubt.

14. Learned counsel appearing for accused Rocky further contended that no independent witness was associated for the recovery of driving license of PW3 from the house of accused Rocky. Learned State counsel submitted that there was no reason to reject the credible testimony of the police official.

15. Law does not prescribe that independent witness should be associated for effecting recovery. Only as a matter of prudence an independent witness is associated. If the official testimony is found to be credible, the question of rejecting their testimony just because no independent witness was associated does not arise for consideration.

16. Learned counsel appearing for the accused Rocky further submitted that PW3 was not subjected to medical examination to establish that he was sedated by the accused.

17. The sequence of events described by PW3 would go to show that he was in fact sedated and he regained consciousness only after he was robbed. Therefore, I do not doubt the testimony of PW3 that he was given stupefying substance before ever he was robbed.

18. In the above facts and circumstances, I find that the trial Court has rightly convicted and sentenced accused Rocky for the charges under Sections 328 and 392 of the Indian Penal Code which stood established. Therefore, appeal stands dismissed.

19. Accused Rocky sought for concurrent running of

sentence with the sentence already ordered in other cases. It appears that he has been convicted in three different cases including the present case. If he undergoes the sentence one after the other he will have to spend his entire life in prison. His whole family will be completely ruined. There is also possibility of reformation if he is released after undergoing the sentence concurrently with the sentence imposed in the other cases. Therefore, Criminal Misc. No. 23492 of 2015 is allowed and it is directed that the sentence imposed in this case on accused Rocky shall run concurrently with the sentence awarded in F.I.R. No. 170/08 dated 27.8.2008 under Sections 458, 148, 342, 395 and 397 IPC, Police Station Beas Malok, Bikaner (Rajasthan) and F.I.R. No. 137/08 ST(54/11) under Sections 394 IPC, Police Station Sadar, Palli (Rajasthan).

**(M. JEYAPPAUL)
JUDGE**

January 06, 2016

p.singh