

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3152-SB of 2010

Date of decision: August 29, 2016

Abdul Hamid alias Chhota

.. Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. PPS Tung, Advocate for the appellant.

Mr. Vijesh Sharma, Deputy Advocate General, Haryana.

A.B. CHAUDHARI, J.

Being aggrieved by the judgment and order dated 6.8.2010 in Miscellaneous Sessions No.20 of 2010, by which the appellant-Abdul Hamid alias Chhota was convicted for the offence under Section 395 IPC and 412 IPC and sentenced to undergo rigorous imprisonment for 10 years and fine in the sum of ₹ 2,000/-, the present appeal has been filed by him before this Court.

FACTS

Briefly stated, the prosecution case is that on 13.12.2008, ASI Shamsher Singh along with Head Constable Jai Pal and driver Varinder were patrolling in vehicle No. HR-45A 6000, when they got information that behind the Shani Temple G.T. Road in the house of Jasbir Singh Gulati dacoity has been committed. Thereafter, they reached the house of Jasbir Singh Gulati and recorded his statement, wherein he stated that his wife-Davinder Kaur and daughter-Suprit Kaur were sleeping in one room when all of sudden they heard a voice of knocking of their door. He went to open

the door to find 6-7 young boys wearing pants-shirts in the age group of about 22-30 years with long knives in their hands. They entered the house and by tearing the bed sheets tied the hands of complainant Jasbir Gulati and his wife with a piece of bed sheet and asked the daughter of the complainant to show the jewellery and cash if any. The daughter pointed out towards almirah and they took out the entire material found in the almirah, but could not find any valuables. Thereafter, they also tied the hands of daughter of complainant and left all of them in a room, thereafter all accused persons fled away. After some time, his servant-Raju came in the house and untied all the family members. They took the search to find out that some momentous and cash was taken away by the accused persons. Later, he came to know that similar dacoity was committed in House No. 467/5 at Karnal. Daughter of the complainant also told the police that one of the accused had a revolver type weapon. After recording the statements, ruqua was sent to the police station and dog squad and finger print experts team visited the spot and investigation commenced. During investigation, Titan watch, two ladies watches of quartz and HMT, three diamond rings, one black bed set, one Bentex set, mobile phone were recovered pursuant to the disclosure statements made by the accused persons. The recovered articles were identified. After completion of investigation, the challan was filed in the Court. The trial Judge thereafter, heard arguments and convicted the appellant Tasleem Usman as above. Hence this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant submitted that the appellant-Abdul Hamid was arrested by the Delhi Police in some other case and this fact came to the notice of the local police on 24.3.2009. The deposition of PW3-Jasbir was recorded on 13.02.2010. No

test identification parade, at all, was held by the police. Not only that, the police has shown the appellant-Abdul Hamid to the complainant after arrest by calling him in the police station and thereafter in custody when the appellant had sought bail before the Court. Thus, the complainant had already seen the appellant as the accused having been shown by the police personnel and therefore, the identification of the appellant in the Court for the first time was fatal to the prosecution case and thus, the conviction of the appellant is clearly wrong and illegal. Counsel then contended that there is no name in the FIR. A fake recovery of articles, which were already shown to the complainant during earlier trial, was again shown before the trial Judge and therefore, the reliance placed on the alleged disclosure of robbed articles was wholly misconceived. Learned counsel for the appellant, therefore, contended that the appellant deserves to be acquitted.

Per contra, learned Deputy Advocate General, Haryana supported the impugned judgment and order of conviction and submitted that in the cross-examination by the counsel for the appellant, it has been brought on record that the appellant was identified by the complainant Jasbir. According to him, the appellant was, thus, clearly identified and there is no reason why the evidence of Jasbir could be rejected. He then submitted that the articles recovered from the appellant were duly identified and, therefore, that was incriminating piece of evidence taken into consideration by learned Trial Judge. He, therefore, prayed for dismissal of the appeal.

CONSIDERATIONS:-

I have heard learned counsel for the rival parties. I have perused the entire deposition of eye witness PW3 Jasbir Gulati. I have seen reasons recorded by the trial Judge for convicting the appellant. Admittedly,

the prosecution examined only one eye witness namely Jasbir before the Court. The prosecution did not examine his wife or daughter before the Court. A careful reading of the case shows that Jasbir, in his examination-in-chief, was not asked to identify the appellant as the same person who had committed dacoity in his house along with other persons nor any specific role was attributed to him. It is in the cross-examination of counsel for the appellant that Jasbir identified both the accused persons in the Court. However, in the cross-examination of PW3-Jasbir Singh Gulati, he has clearly stated as under:-

“The accused never came to my house with these accused persons. I have seen the present accused persons when they appeared before the court for seeking their bail. I do not remember the date and month when the accused were seen by me in the court. It is correct that the present accused appeared for bail before the Court of Learned Lady Judge.

When the police informed me about the arrest of the accused then I visited in PP Sector-4 and both the accused were present there”.

In view of the above evidence, in my opinion, the substantive evidence of complainant-Jasbir Singh Gulati PW3 is shaken and it would be risky to convict the appellant-Abdul Hamid @ Choota in this case. At any rate, the benefit of doubt must be given to the accused.

The next evidence led before the trial Judge is the disclosure of articles. In the first place, the disclosure of articles by itself is such an evidence which should not be sufficient to record conviction. Secondly the disclosure of articles were already made and the articles were identified firstly when the trial was held. It is, therefore, clear that the disclosure is nothing but farcical. It is not possible to place reliance on the disclosure at any rate, as the only evidence for recording conviction. I, therefore, find that

the appellants deserves to be acquitted. Hence, the following order:-

ORDER

- (i) Crl. Appeal No.S-3152-SB of 2010 is allowed;
- (ii) The appellant Abdul Hamid @ Choota is acquitted of the charge framed against him;
- (iii) The appellant Abdul Hamid @ Choota be released forthwith if not required in any other case;
- (iv) Amount of fine, if recovered, be refunded to the appellant.

August 29, 2016
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(A.B. CHAUDHARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No