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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3092-SB of 2012
Date of decision: May 06, 2016

Parkash @ Jagat
.....Appellant

Versus

State of Haryana
....Respondent

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

Present: Mr. Rakesh Dhiman, Advocate
for the appellant.

Mr. Vijesh Sharma, DAG Haryana.

- 1. Whether Reporters of Local papers may be allowed to see the judgment? yes
- 2. To be referred to the Reporters or not? no
- 3. Whether the judgment should be reported in the Digest? no

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 18.08.2012/27.08.2012 passed in Sessions Case No.46 of 2010, by which the Sessions Judge, Gurgaon convicted the appellant for commission of offence punishable under Section 394 of the Indian Penal Code, 1860 ('IPC' for short) read with Section 397 IPC and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of ₹10,000/-, in default of payment of fine, rigorous imprisonment for ten months, the present appeal was filed by the appellant-Parkash @ Jagat.

In support of the appeal, learned counsel for the appellant assailing the impugned judgment and order and submitted that the learned

trial Judge committed an error in convicting the appellant. As a matter of fact the identity or identification of the appellant-accused as the offender was not at all established. According to him, the prosecution case itself was that the person who had fired the shot was never known to PW11-Siri Pal and therefore, it was wrong to convict the appellant-accused. It is submitted that the reliance placed by the trial Judge on the alleged discovery was not trustworthy and was liable to be rejected. He thus, submitted that the prosecution case itself was wholly doubtful atleast for convicting the appellant-accused since three persons were alleged to have arrived on the motorcycle outside the Bank premises. When the trial Judge acquitted the other two accused persons, there was no semblance of evidence to convict the present appellant. He therefore, prayed for setting aside the impugned judgment and order.

Per contra, learned State counsel supported the impugned judgment and order of conviction and sentence and submitted that the prosecution had proved its case beyond reasonable doubt and therefore, the appeal should be dismissed.

The learned counsel for the appellant, in the alternative, submitted that the appellant-Parkash has already undergone the sentence of six years and eight months with remissions. In the other five criminal cases, in which he was prosecuted, he was acquitted in all the cases and that is why there is no other conviction against him. Therefore, the appellant should be sentenced to the imprisonment he has already undergone.

I have heard learned counsel for the rival parties. I have perused the evidence tendered by the prosecution before the trial Court. I have seen the reasons recorded by the trial Judge for recording the

conviction against the appellant.

It is true that the other two accused persons out of the three accused persons, who were prosecuted including the present appellant, were acquitted by the trial Judge, but the appellant-Parkash was convicted. In so far as the question of identity as contended by the learned counsel for the appellant is concerned, there is reliable evidence on record. The trial Judge has given reasons for relying on the identification of the appellant in the Court by PW11-Siri Pal with which I agree. It is not in dispute that the appellant had refused to participate in the identification proceedings or the Test Identification Parade. No reason or justification was given by the accused for doing so. The trial Judge therefore, rightly recorded the conclusion having believed the testimony of PW11-Siri Pal that the appellant-accused was identified as the person who had fired the shot and had committed the offence in question. Instead of recording separate reasons on evidence, I quote Paragraphs 39, 40, 41, 42 and 43 from the impugned judgment of the trial Judge, which read thus:-

“39. So far as identification of accused by witness Siripal (PW11) is concerned, it has legal value. The reasons are as under:-

*40. The accused had refused to participate in test identification parade when the investigating police had sought to join them in investigation vide requests Ex.PQ and Ex.PR respectively of accused Maman Singh and Hoshiar Singh. Order dated 9.6.2010 of the learned Magistrate clearly depicts that the accused had refused to participate in the test identification parade. Rather the interface of refusal of the accused, neither investigating police nor trial court could have forced the accused to participate in test identification parade, rather in view of the Division Bench of Hon'ble High Court reported as **Bhartu alias Bharat Singh vs. State of***

Haryana, 1985(2) RCR 504 (P&H), presumption can be drawn against the accused on such refusal. It is to be noticed further that when the accused had preempted the move of the investigation police to hold test identification parade by marking clear refusal no test identification parade could legally be held. In these circumstances with due deference to the law laid down by the learned defence counsel, would not be of any support to the accused.

41. When the accused themselves had refused to participate in test identification parade, they cannot be allowed to turn around later to say that their identification in the court in absence of test identification parade by the police earlier is of no value. They cannot be allowed to take the benefit of their own action. In **Baldev Singh vs. State of Haryana, 1999(2) RCR (Criminal) 487 (P&H)** in similar circumstances as are prevailing in the case in hand, the identification of the accused in the court for the first time was held to be admissible and was given due weight.

42. Injured Siripal PW has clearly explained the circumstances in which he could see the face of his assailant who later robbed the cash of Rs.3,90,275/- from the cabin of PW Ashok Kumar, Cashier and managed to take away the bag with the robbed cash on the motorcycle along with his two other companions who were guarding and covering him while standing outside the bank. Relevant portion of statement of Siripal (PW11) is as below:-

“It is correct that in my statement, I got it conveyed that accused persons were muffled face, so voluntarily that cloth covering the face of accused Parkash was slipped when he had a scuffle with me and at that time I had seen his face. I do not remember whether I had narrated to the police the factum of my seen the face of accused Parkash as at that time I was rolling under pain on account of injuries sustained at the hands of accused persons.”

43. Testimony is reinforced from the fact that he himself was badly injured having been fired at by the assailant from a close range. It was a good luck for him that he was

saved though had to take many rounds of the hospitals as has been seen in earlier part of the judgment. He is thus a labelled and sequelly important nature witness.”

In so far as the discovery is concerned, the evidence of PW12-Amit Lal, police inspector, clearly indicated that on 07.02.2010, Inspector Lal Singh and Ram Avtar interrogated the accused-appellant Parkash who made disclosure statements Mark-A and Mark-B. There is no reason to disbelieve the statement in the absence of any challenge in the cross-examination. I am, therefore, inclined to believe the evidence regarding discovery. In the result, I find that the conviction recorded by the trial Judge for the offences under Section 394 IPC read with Section 397 IPC will have to be confirmed.

The next question is about the sentence awarded to the appellant. The appellant was awarded sentence of ten years and fine. The custody certificate shows that the appellant is not convicted in any other cases in which he was tried but was acquitted in all the cases. In the present case, he has undergone sentence of six years and eight months. In the background of the above facts, I think the appellant's sentence should be reduced to the one he has already undergone.

In the result, I make the following order:-

ORDER

CRA-S-3092-SB of 2012 is partly allowed.

The impugned judgment and order dated 18.08.2012/27.08.2012 of conviction of the appellant for the offences punishable under Section 394 IPC read with Section 397 IPC, is confirmed. However, the judgment and order regarding sentence of ten years, is modified and the appellant is sentenced to undergo the sentence which he

has already undergone. Fine be paid, if not already paid by him within four months and in-default, he will have to undergo imprisonment for one month.

(A.B. CHAUDHARI)
JUDGE

May 06, 2016
mahavir