

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 568 of 2016

Judgment reserved on : 06.02. 2017

Judgment delivered on : 30.03.2017

Suraj Chourasia @ Bharat Jain, S/o. Mahesh Chourasia @ Ashok Jain, aged 28 years, resident of Saadri, Pandiyon ka Mohalla, Police Station Saadri, District Pali (Rajasthan)

---- Appellant

Versus

State of Chhattisgarh through the Police Station Railway Protection Force (RPF), Bilaspur (C.G.)

---- Respondent

For Appellant : Shri Vivek Shrivastava, Advocate

For Respondent/ State : Shri Neeraj Sharma, Dy, Govt. Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.09.2012 passed by Sixth Additional Sessions Judge, Bilaspur in Sessions Case No. 68/2012, whereby learned Six Additional Sessions Judge, Bilaspur has convicted the appellant for the offence punishable under Sections 328 and 379 IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 1000/- and rigorous imprisonment for 6 years and to pay fine of Rs. 1000/- with default stipulations, respectively with a direction to run the sentences concurrently.

2. As per case of the prosecution, on 06.08.2010 complainant Meenakshi Chadda W/o. Vipul Ajmani was going to Gwalior from Sambalpur in Hirakund Express in coach No. A-1 at berth no. 10. During the journey at Bilaspur Railway Station, the appellant offered her milk mixed with intoxicated pills and after drinking the said milk the complainant became unconscious and after taking advantage of her condition the appellant stolen her gold mangalsutra, two golden rings, two diamond rings, four golden bangles, one necklace and cash of Rs. 7,000/- from her. The complainant lodged a written complaint (Ex.P-1) in Police Station G.R.P. Gwalior on which the FIR (Ex.P-2) was registered against unknown person under Crime No. 9/10 under Sections 328 and 379 IPC. The incident had happened at Bilaspur Railway Station, therefore, the case of the complainant was transferred from Police Station G.R.P. Gwalior to Police Station G.R.P. Bilaspur and on receipt of the case on transfer to Police Station G.R.P. Bilaspur registered a case against the unknown person under Crime No. 94/10 under Sections 328 and 379 IPC and investigated into the matter. During the investigation, on the memorandum statement of the appellant stolen jewellery in form of gold melted by him was recovered vide Ex.P-19. Statements of witnesses were recorded and the appellant was arrested. Identification parade of the appellant was conducted vide Ex.P-4.

3. After completion of the investigation, a charge-sheet was filed against the appellant in the Court of Special Railway Magistrate, Bilaspur, who, in turn, committed the case to the

Court of Session, Bilaspur, from where it was received on transfer by the Sixth Additional Sessions Judge, Bilaspur, who conducted the trial and convicted and sentenced the appellant as aforementioned.

4. Statements of complainant Meenakshi Chhadda (PW-1), Pradeep Kumar Soni (PW-2), Assistant Sub-Inspector, GRP, Gwalior, Ram Naresh Sharma (PW-3), Assistant Sub-Inspector, GRP Raigarh Ram Rao Kalamkar (PW-4), Sub-Insepctor GRP, Bilaspur K. C. De (PW-5), Station House Officer Police Station Kamlanagar, Bhopal, Rajendra Singh (PW-6), Dr. C.P. Bansal (PW-7), Tahsildar Ashutosh Sharma (PW-8) were recorded in the Court below. Statement of the appellant was also recorded under Section 313 Cr.P.C. The trial Court, after hearing learned counsel for the respective parties and considering the material available on record, has convicted and sentenced the accused/ appellant as mentioned above.

5. Shri Vivek Shrivastava, learned counsel appearing for the appellant argued that the judgment of conviction passed by the Trial Court is contrary to the facts and the material available on record. Learned counsel further argued that the seizure witnesses have not supported the case of the prosecution. Learned counsel further argued that the test identification parade of the appellant has not been conducted by the prosecution in the manner as prescribed under the law. Learned counsel for the appellant further argued that the prosecution has failed to bring any documentary evidence like railway ticket on

record suggesting that on the alleged day the appellant was travelling in the said train. Learned counsel further argued that even if the prosecution case is taken on its face value, then also various persons were travelling in the compartment of the said train and, therefore, it cannot be said that the appellant is the only person who has committed the crime. Learned counsel for the appellant further submits that the appellant has been falsely implicated in the instant case, therefore, he may be acquitted of the charge framed against him.

6. On the contrary, Shri Neeraj Sharma, Dy. Govt. Advocate for the State/respondent, opposed the above arguments, supported the impugned judgment passed by the Sixth Additional Sessions Judge and claimed that the impugned judgment is impeccable and does not warrant any interference by this Court.

7. I have heard learned counsel appearing for the parties at length and have also perused the record with utmost circumspection.

8. The questions which arise for consideration before this Court are-

- (i) Whether the judgment of conviction and order of sentence passed by the Trial Court is maintainable?
- (ii) Whether the appellant with an intention to commit the crime in question offered complainant Meenakshi Chadda intoxicated milk and Meenakshi Chadda after drinking the said milk became unconscious ?

(iii) Whether the appellant took her ornaments and cash of Rs. 7,000/- when she became unconscious from her without her consent?

9. Meenakshi Chadda (PW-1) deposed that she knew the appellant and a written complaint (Ex.P-1) was lodged by her in Police Station, GRP, Gwalior and on the basis of the said written complaint (EX.P-1), FIR (Ex.P-2) was registered against as unknown person. She further deposed about the incident that on 06.08.2010 she was going to Gwalior from Sambalpur in Hirakund Express at coach No. A-1, in berth no. 10. The appellant changed his berth at Bilaspur Station and came in her coach, when the said train stopped at Bilaspur platform the appellant brought four bottles of Amul milk and distributed them among other inmates of the coach including her. After taking one or two sips of milk from the bottle, she left the remaining milk. Immediately thereafter, she had a serious head ache and swirl, therefore, she went to sleep on her birth. She further deposed that she had a ladies purse in which she had a set of diamond necklace amounting to Rs. 10,000/- and cash of Rs. 7,000/-. She had worn a diamond mangalsutra in her neck amounting to approximately Rs. 25000 – 30000/-, two golden rings amounting to Rs. 10,000/-, two diamond rings amounting to Rs. 18,000/- and four golden bangles amounting to Rs. 40,000 to 60,000/- weighing total four tolas. She further deposed that after drinking milk she went to her berth for sleeping and became unconscious

there. She was admitted in a hospital at Gwalior and treated there. After three days of the incident, she became conscious.

10. Dr. C.P. Bansal (PW-7) deposed that on 07.08.2010 the complainant was admitted in the hospital by her father. The doctor has verified the treatment slip (Ex.P-16). He further deposed that he had advised the complainant for blood test and for bio-chemical test. There reports are Ex.P-17 and Ex.P-18. The doctor has not stated anything in his report regarding unhealthiness of the complainant and the prosecution has also not produced any report in its support that which kind of substance was given to the complainant by consumption of which she became unconscious.

11. According to Meenakshi Chadda (PW-1) while she was offered milk by the appellant, at that time, one Sardar-ji and one other person were there who were travelling from Raigarh to Ambala in the said train. The appellant had also offered them milk and they were also drinking the same, but the prosecution has not recorded the statement of these two persons.

12. During the investigation, how the police reached to the appellant and identified him, neither the prosecution has examined any witness in this regard nor has it submitted any evidence before the Court.

13. The prosecution has examined Pradeep Kumar Soni (PW-2) from whose jewellery shop complainant Meenakshi had purchased the golden rings and bangles. Pradeep Kumar Soni

(PW-2) has verified the receipt of the purchase of the said jewellery. But, the material seized (Ex.P-14) from the rented house of the appellant situated at Meerabhaidar Road (East Mumbai) on the basis of memorandum statement (Ex.P-13) of the appellant were two gold biscuits of about 100 grms worth Rs. 2,00,000/-. This seizure has been verified by Rajendra Singh Raghuvanshi (PW-6), who was posted as Station House Officer, Police Station- Kamlanagar, Bhopal.

14. Statements of independent witnesses Brijkishore and Pappu were not recorded before the Court below. In her report, the complainant has stated regarding theft of gold ornaments from her, but, the police has not seized any gold ornaments from the appellant and the same was not submitted before the Court for verification and on the basis of which involvement of the appellant in the crime in question could not be proved.

15. Meenakshi Chadda (PW-1) deposed in para-4 of her deposition that she knew the appellant. She identified the appellant in the identification parade which was conducted before the Magistrate in Bhopal. But, in her cross-examination, at para-9, she has deposed that after the train incident, she saw the appellant in the Police Station and thereafter she identified the appellant in the identification parade. It means, before the identification parade, the Police had not covered the face of the appellant, therefore, the complainant saw the appellant in the Police Station before the identification parade. According to Tahsildar Ashutosh Sharma (PW-8) and Executive Magistrate

Govindpura, Bhopal, he had conducted the identification parade of the appellant in Central Jail, Bhopal before the witnesses. Now, the question which arises for consideration is that if the appellant was in Central Jail, Bhopal, how and for what was he brought to the Police Station. Therefore, the identification parade conducted by the Police is not in accordance with law.

16. In State of M.P. v. Chamru @ Bhagwandas etc, AIR 2007 SC 2400, it has been observed thus:

“10. We find that it is not merely a case of non-mention of the names. Undisputedly, the photographs of accused Chamru were shown to two of the child witnesses before the Test Identification Parade. That took away the effect of the Test Identification Parade. Learned counsel for the appellant has referred to the evidence of PW-3 to contend that she was not shown the photographs. Even a bare perusal of her evidence in Court shows that she was not a credible witness and was tutored. She has categorically stated that she knew the accused by name. As noted above, her evidence also shows that she was tutored. For example, the voltage of the bulb which was supposed to be lighted at a distance of about 200 yards was stated to have been seen by her. Most of her statements in court were exaggerations and embellishments. Secondly, most of the vital facts were not stated during investigation.”

17. In C. Muniappan and others vs. State of T.N. AIR 2010 SC 3718, it has been observed thus:

"36. Thus, it is evident from the above, that the Test Identification Parade is a part of the investigation and is very useful in a case where the accused are not known before-hand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court. The Test Identification Parade provides for an assurance that the investigation is proceeding in the right direction and it enables the witnesses to satisfy themselves that the accused whom they suspect is really one who was seen by them at the time of commission of offence. The accused should not be shown to any of the witnesses after arrest, and before holding the Test Identification Parade, he is required to be kept "baparda".

37. xxxxxxxxx

38. xxxxxxxxx

39. xxxxxxxxx

40. It is evident from the evidence of Shri Kalaimathi, Judicial Magistrate (PW.89), who conducted the Test Identification Parade, that all the witnesses had reached the Central Prison, Salem, before 10.30 a.m. All preparations/arrangements had been made in advance by the Jail authorities as per direction of the said officer. Arrangements of standing of the accused along with other inmates in jail of the same height and complexion had already been made. There had been no haste or hurry on the part of Shri Kalaimathi, Judicial Magistrate (PW.89) to conclude the proceedings. More so, for reasons best known to the defence, no question had been asked to the said Judicial Magistrate (PW.89) in his cross-examination as to how he could conclude the said proceedings within

such a short span of time. Thus, the submission is not worth consideration.”

18. In **Mulla and another v. State of Uttar Pradesh (2010) 3 SCC 508**, it has been observed thus:

“41. Now, let us consider the arguments of the learned amicus curiae on the delay in conducting the test identification parade. The evidence of test identification is admissible under Section 9 of the Indian Evidence Act, 1872. The Identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in Court. There is no provision in the Cr. P.C. entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court.

42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction.

43. As was observed by this Court in *Matru v. State of U.P.*, (1971) 2 SCC 75, identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with

the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. (Vide Santokh Singh v. Izhar Hussain, (1973) 2SCC 406).

44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

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54. In another case of Pramod Mandal v. State of Bihar (2004) 13 SCC 150, placing reliance on the case of Anil Kumar v. State of UP (2003) 3 SCC 569, this Court observed that '(Pramod Case, SCC p. 158, para 20)

“ 20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a Test Identification Parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the Courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the Test Identification Parade must be held, it would only benefit the professional

criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification.

55. The identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is two-fold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Therefore, the following principles regarding identification parade emerge:

- (1) an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses;
- (2) this condition can be revoked if proper explanation justifying the delay is provided; and,
- (3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses."

19. Thus, keeping in view the above quoted decisions, only on the basis of test identification parade of the appellant, it would not be safe to hold the appellant guilty for commission of the offence in question.
20. Statements of independent witnesses Brijkishore and Pappu were not recorded before the Court below. From the investigation of the Police it is not clear that the appellant was in custody at Central jail, Bhopal. Therefore, how the appellant was brought to the Police Station and how he is concerned with the present case. The prosecution, while making seizure from the appellant, has also not found any theft gold ornaments. The appellant was in custody at Central Jail, Bhopal, therefore, how the complainant saw him at the Police Station and how immediately thereafter, the test identification parade was conducted by the prosecution at the Central Jail, Bhopal.
21. Thus, having given a careful consideration to the facts, evidence, circumstances and the submissions made by the learned counsel for the parties, I am clearly of the opinion that the prosecution has not succeeded in establishing its case

against the appellant beyond reasonable doubt. Therefore, the impugned judgment of conviction and sentence passed by the trial court is not maintainable.

22. For the foregoing reasons, the appeal is allowed. The impugned judgment of conviction and sentence passed by the Court below is set aside. The appellant is acquitted of the charges framed against him.
23. It is reported that the appellant is on bail in the present case. His bail bonds are not discharged at this stage. His bail bonds shall remain operative for a further period of six months from today in accordance with the provision contained in Section 437A Cr.P.C.

Sd/-
(Anil Kumar Shukla)
Judge