

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2320-SB-2004

Date of decision: 15.03.2017

Alam

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Satish Chaudhary, Advocate for the appellant.

Mr. Gaurav Bansal, AAG, Haryana.

RAMENDRA JAIN, J.

1. Appellant-Alam has filed the instant appeal against the judgment of his conviction dated 21.10.2004 and order of sentence dated 25.10.2004, rendered by the learned Additional Sessions Judge (Adhoc), Faridabad, whereby he was convicted under Section 412 IPC and sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of ₹ 2000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 3 months.

2. Briefly stated, around 10.00 P.M. on 02.12.2003, truck bearing registration No. HR-38-D-8592, loaded with sundry items was robbed/hijacked near village Shahpur (Rajasthan) by 5 persons after giving beatings to its driver/owner-Satpal (PW-4) and cleaner-Azad (PW-5), against whom initially, an FIR No. 584 dated 02.12.2003 (Ex. PC) was registered under Sections 143, 341, 323, 384 IPC and Sections 395 and 397

IPC were added later on, on recovery of the aforesaid truck near Ballabgarh (Haryana) on 06.12.2003, on the basis of a secret information received by PW-6 ASI Umar Mohd., from the custody of the appellant after laying barrier/nakabandi on the turning of Sector 25, Ballabgarh, in the presence of PW-1 Sheshgiri, Manager of a transport company under the name and style, TCI Company, Faridabad, vide recovery memo Ex. PA duly signed by him. Rough site plan Ex. PE of the place of occurrence was also prepared. Appellant was arrested and interrogated. He suffered disclosure statement Ex. PB. Formal FIR Ex. PF was recorded by SI Om Parkash. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the appellant.

3. On commitment of the case, the appellant was charge-sheeted under Section 412 IPC, to which he pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined as many as 8 witnesses.

5. In his statement recorded under Section 313 Cr.P.C., the appellant denied the entire incriminating evidence brought on record against him and pleaded his false implication. In defence, the appellant examined two witnesses, namely, DW-1 Usman and DW-2 Mehru.

6. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the trial Court convicted and sentenced the appellant as referred to in the earlier part of this judgment.

7. Learned counsel for the appellant contended that the recovery is doubtful as recovery memo Ex. PA is not signed by any independent witness. He further contended that the appellant was falsely implicated in this case by PW-6 ASI Umar Mohd. by leaving the real culprit Rafiq, who

was actually driving the alleged truck at the time of recovery. It was also contended that the trial Court had wrongly discarded the testimony of defence witnesses, namely, DW-1 Usman and DW-2 Mehru. As per initial version of the prosecution, the truck was robbed by 5 assailants at village Shahpur (Rajasthan) and, thus, the appellant was falsely implicated in this case by registering a separate FIR in the State of Haryana, in contradiction to the initial version. Learned counsel for the appellant also contended that there are number of discrepancies in the statements of the prosecution witnesses which make the prosecution case doubtful.

8. On the other hand, learned State counsel vehemently opposed the arguments advanced by learned counsel for the appellant.

9. I have given my thoughtful consideration to the submissions made by learned counsel for the appellant as well as the learned State counsel.

10. The submission made by learned counsel for the appellant that the recovery of truck effected from the appellant-Alam is doubtful, as the recovery memo Ex. PA is not signed by any independent witness, is completely devoid of any merit, inasmuch as perusal of recovery memo Ex. PA shows that the same is signed by an independent witness, namely, PW-1 Sheshgiri, Manager, TCI Company, Faridabad. The alleged truck was attached to the aforesaid transport company.

11. As far as false implication of the appellant at the instance of PW-6 ASI Umar Mohd. by leaving the real culprit Rafiq, who was allegedly driving the truck at the time of recovery, is concerned, I find no force in the above submission because, admittedly, the stolen truck and sundry items were recovered from the appellant on 06.12.2003, whereas the statements of

DW-1 Usman and DW-2 Mehru were recorded in the Court in the months of September and November, 2004, respectively i.e. after about more than 9 months of the incident. During this long period, neither the above witnesses nor the appellant-Alam or any of his relatives ever made any effort to report in regard to alleged false implication of the appellant as well as the alleged corruption of PW-6 ASI Umar Mohd., to the higher police authorities or any other Government functionaries. Their long silence itself speaks that they are procured witnesses. Though, in cross-examination, DW-1 Usman had deposed that he had disclosed this fact to Deputy Superintendent of Police, but could not withstand the test of his cross-examination, when he stated that he did not know the name of DSP nor could produce the copy of alleged complaint which he had allegedly, moved to the said DSP. Even the testimony of DW-2 Mehru is completely based on hearsay, because he had simply stated that he had heard that the appellant was falsely implicated at the behest of one Ashu.

12. No material discrepancy has been pointed out by learned counsel for the appellant except regarding the time of the presence of PW-1 Sheshgiri and the police party at the spot. The said discrepancy relates to an insignificant aspect of the case because every individual has his own perception about the time, distance and events. According to PW-6 ASI Umar Mohd., PW-1 Sheshgiri had reached the spot around 3.00 P.M. and the truck had reached at the place of Nakabandi or barrier after 15 minutes i.e. at 3.15 PM, whereas PW-1 has deposed that he had joined the police party at 6.00 P.M. Even otherwise, the said discrepancy has been very well met out by the prosecution, because PW-1 in his cross-examination deposed that he had reached at the spot around 3.15 PM and after 20 minutes, the

truck in question was spotted coming from Sohana Road side. The above clarification in the cross-examination of PW-1 Sheshgiri shows that there was some typographical mistake in his examination-in-chief about his arrival at the spot. More so, this very discrepancy has been very well dealt with by the trial Court.

13. The prosecution has been able to prove its case against the appellant beyond any reasonable shadow of doubt, because the appellant was arrested with the stolen/robbed truck and articles loaded therein at the spot. The appellant never claimed his ownership over the truck or the articles loaded therein which itself is sufficient to uphold the findings rendered by the trial Court that it was the appellant who along with his companions has robbed the truck. As discussed above, when the stolen truck was looted/robbed in the area of Shahpur (Rajasthan), initially, FIR No. 584 dated 02.12.2003 (Ex. PC) was registered under Sections 143, 341, 323, 384 IPC. During the course of investigation of the said case, when some more facts came to the light of the police officials of Police Station Shahpur, on the basis of statement of complainant-Satpal owner of the truck (PW-4), Sections 395 and 397 IPC were added. It is pertinent to mention that the appellant is also one of the person, out of 5 assailants, who had robbed the truck in question. Thus, the presence of the appellant at the time of robbery was also proved, but the factum of presence of the appellant at the spot is not the subject matter of this case, because a separate case qua the said incident is being tried at Rajasthan. Since, as discussed above, the recovery of stolen truck and the goods loaded in the same was effected from the appellant at the spot, therefore, he has rightly been convicted and sentenced under Section 412 IPC by the trial Court.

14. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed. Appellant-Alam is on bail and the bail bonds furnished by him stands cancelled. A copy of this judgment be forwarded to the learned Chief Judicial Magistrate, Faridabad, who would issue re-arrest warrants of the appellant to undergo the remainder of the sentence.

March 15, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No