

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1282-SB-2016 (O&M)
Date of decision: 05.12.2018

Sandeep @ Sonu & anr. ... Appellants

versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rohit Kaushik, Advocate
for appellant No.1.

Mr. R.K.Gupta, Advocate
for appellant No.2.

Mr. Ayuwan Singh, AAG, Haryana.

Manjari Nehru Kaul, J.

1. The instant appeal is directed against the judgment of conviction and order of sentence dated 21.01.2016 passed by learned Sessions Judge, Ambala wherein the accused-appellants have been convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Sandeep @ Sonu	392 read with Section 397 Indian Penal Code (IPC)	Rigorous imprisonment (RI) for 07 years	₹ 25,000/-	One year RI
Uma Kant @ Uma Shankar @ Robin	392 read with Section 397 IPC	RI for 07 years	₹ 25,000/-	One year RI
	25 of the Arms Act	RI for 02 years	₹ 5,000/-	04 months RI

2. The prosecution case in brief is that on the intervening night of 9/10.11.2014, when the complainant Gurpreet Singh (PW-3) after attending

a wedding at White Oak Palace, Village Balana along with his friend Taranjit Singh (PW-7) came and sat in his car (Verna Model) bearing registration No.HR-01-AG-9315, which was parked in the parking area. 3-4 boys came to the spot. One of the boys caught hold of the complainant by his neck and dragged him outside the car after putting a pistol on his head. Taranjit Singh (PW-7), who was sitting alongside the complainant in the car on the front seat, was dragged out too by another boy after putting a knife against his neck. The assailants after putting both complainant – Gurpreet Singh (PW-3) and his friend – Taranjit Singh(PW-7) in fear, fled away with the car of the complainant from the spot. A mobile phone of the complainant (make Gionee with Sim No.9812031009) which was lying in the car, was also taken away by the assailants. The complainant immediately informed his father Trilochan Singh (PW-4) about the alleged occurrence. Since they were unable to locate their car, the complainant made a complaint Ex.P-4 to ASI Sarwan Kumar(PW-2) leading to the registration of formal FIR Ex.P-2 by PW-1 SI Randhir Singh on 10.11.2014 at 4.15 am against unknown persons . During the investigation, site plan Ex.P5 qua the place of occurrence was prepared and the investigation was thereafter handed over to CIA staff, Ambala.

Meanwhile, the accused-appellants were arrested by the Rajasthan police in FIR No.102 dated 03.12.2014 for offences under Sections 307/353/34 IPC and 3/25 and 27 of Arms Act registered at Police Station Mahajan, District Bikaner. During their interrogation by the Rajasthan police in the aforementioned FIR, the role of the accused-appellants in the present case came to light. It was then that CIA Staff, Ambala was intimated about their arrest and involvement in the crime qua

which complainant Gurpreet Singh (PW-3) had already made a complaint i.e. Ex.P-4. Thereafter, ASI Daya Krishan (PW-12) went to Bikaner and on 20.01.2015, after obtaining the necessary permission from the Illaqa Magistrate arrested the two accused-appellants in the present case. The car recovered from the possession of the accused was taken into possession vide recovery memo Ex.P-13.

4. Both the accused were charge-sheeted by the trial Court for offences under Section 392 read with Section 397 IPC. Accused-appellant Uma Kant @ Uma Shankar @ Robin was also charge-sheeted under Section 25 of the Arms Act. Both the accused-appellants pleaded not guilty to the charges framed against them and claimed trial.

5. During the course of trial, prosecution examined PW-1- SI Randhir Singh, PW-2 -ASI Sharwan Kumar, PW-3- complainant Gurpreet Singh, PW-4 Trilochan Singh, father of the complainant, PW-5 EASI Niranjana Singh, PW-6 Rajesh Kalyan, Clerk, Tehsil Office, Ambala, PW-7 Taranjeet Singh, PW-8 Ramanuj Saraswat, PW-9- HC Kashi Ram, PW-10 Inspector Jaspal Singh, PW-11 – DSP Om Parkash Joshi and PW-12 – SI Daya Kishan.

6. On conclusion of the prosecution evidence, statement of both the accused under Section 313 Cr.PC were recorded wherein they denied all the incriminating circumstances appearing against them in the prosecution evidence. They both pleaded innocence and false implication.

7. The learned trial Court vide impugned judgment dated 21.01.2016 found accused-appellants guilty for the offence under Section 392 read with Section 397 IPC. Accused-appellant Uma Kant @ Uma Shankar @ Robin was also found guilty for the offence under Section 25 of

Arms Act. Both the accused were sentenced to undergo the rigorous imprisonment as already detailed above.

8. Learned counsel for the appellants have challenged the impugned judgment primarily on the following grounds:

(i) No test identification parade of the accused-appellants was conducted.

(ii) Confessional statements made by the accused-appellants before the Rajasthan police could not have formed the basis of their conviction by the trial Court.

(iii) No independent witnesses were joined at the time of disclosure statement of the appellants and recoveries and hence, the recoveries could not have been said to be proved.

(iv) Engine and chassis number of the recovered car did not match with the car robbed.

(v) There were discrepancies in the deposition of the prosecution witnesses.

9. Learned State counsel, on the other hand, has vehemently opposed the submissions made by learned counsel for the appellants by contending that there is sufficient evidence to hold the accused-appellants guilty and fully liable for offence under Section 392 read with Section 397 IPC and 25 of the Arms Act and prayed for dismissal of the instant appeal.

10. I have heard Mr. Kaushik and Mr. Gupta appearing for the appellants as well as Mr. Ayuwan Singh, State counsel and perused the evidence and other material available on record.

11. In the case in hand, admittedly, no Test Identification Parade was conducted nor were the two material witnesses i.e. complainant

Gurpreet Singh (PW-3) and Taranjit Singh (PW-7) able to identify both the accused-appellants in Court.

The question, which then would arise is whether the non-identification of the appellants tilt the balance in their favour?

12. A perusal of the deposition of both the material witnesses i.e Gurpreet Singh (PW-3) and Taranjit Singh (PW-7) clinchingly reveals that they both have not only been consistent but have corroborated with each other on all material facts. One fact, thus stands established is that they were robbed of their vehicle No.HR-01-AG-9315 on the night of 9/10.11.2014 from White Oak Palace, Ambala.

Though learned counsel for the appellants have pointed out some discrepancies and contradictions, which have appeared in the deposition of both the prosecution witnesses but the same cannot be said to be so fatal so as to cause any dent in the case of the prosecution. It is very natural for such like discrepancies to occur in the case of even the most reliable and trustworthy witnesses, with the passage of time.

13. Taking the discussion further, it would be very relevant to appreciate the sequence of events leading to the apprehension of the appellants and their arrest by the Rajasthan Police and their subsequent arrest by the Haryana Police in the instant case.

PW-11 DSP Om Parkash Joshi registered FIR No.102 dated 03.12.2014 for offences under Sections 307/353/34 IPC and 25 and 27 of Arms Act at Police Station Mahajan, District Bikaner (Rajasthan). It would be relevant to notice that when the appellants were apprehended by the Rajasthan Police they

were in possession of Verna car bearing registration No.HR-26-CE-6892.

14. Learned counsel for the appellants have vehemently urged that the trial Court has erred by taking into account the confessional statements made by the appellants before the Rajasthan police and thus, the same could not have been made the basis of their conviction.

15. I have given my due consideration to this submission but the same deserves to be discarded.

PW-11 DSP Om Parkash Joshi has categorically deposed that it was only during their interrogation, that the role of the appellants was revealed vide interrogation reports Ex.P-17 and Ex.P-18. This deposition of PW-11 DSP Om Parkash Joshi cannot be read in isolation. It rather has to be appreciated in the wake of the recovery of Verna Car bearing registration No.HR-26-CE-6892, which was recovered from the appellants vide recovery memo Ex.P-19. This vehicle, during the investigation by the Rajasthan police, was found to be bearing a fake registration number. Not only was the vehicle bearing a fake registration number but even the chassis number of the vehicle had been tampered with. As per the endorsement Ex.P-12 of the Registering Authority, Ambala proved by PW-6 Rajesh Kalyan, the said car bearing Chassis No.'MALCT 41 RLDM 11680 -5C' was registered in the name of PW-4 Trilochan Singh, who is none other than the father of complainant Gurpreet Singh. As per the recovery memo Ex.P-19, the last two digits of the chassis of the Verna car after

'dash' were 'XE' whereas as per report Ex.P-12, the last two digits were '5C'. The remainder of the 16 digits matched with each other. A perusal of Ex.P-19 clearly reveals that the last two digits after 'MALCT 41 RLDM 11680' were not clearly legible and hence, it leads to no manner of doubt that the last two digits had indeed been tampered with.

16. There is no explanation by the appellants on record as to how and under what circumstances they came to be in possession of the aforementioned vehicle. The explanation of the appellants of being in the possession of this vehicle should have been so reasonably, convincing so as to throw a doubt on their guilt; but a mere denial of the prosecution story, or any assertion inconsistent with the facts, which stand proved by the prosecution would not amount to an explanation to make the presumption unavailable to the prosecution. It is not even the case of the appellants that the recovered car belonged to them or it had a genuine registration number. Rather, the only suggestion, which was given to PW-11-DSP Om Parkash Joshi is that in fact no recovery was ever effected from them.

17. Hence, in cases where the assailants are strangers and unknown to the victims, a demand by the the appellants(accused) to prove their identity by conducting a test identification parade or otherwise, should not be a sine qua non for holding them guilty of an offence. Thus, non-conducting of the test identification parade would be of no help to the appellants when their complicity in the crime stands proved through recovery of the vehicle No.HR-01-AG-9315 from them.

18. Another circumstance, which cannot be ignored and nails the appellants is their disclosure statements Ex.P-17 and Ex.P-18 leading to the

recovery of a knife, which was stated to have been used by one of the appellants during the commission of crime at White Oak Palace, Ambala on 9/10.11.2014. These disclosure statements have been duly proved by the testimony of PW-12 SI Daya Krishan and find corroboration from the testimony of PW-5 ASI Niranjan Singh as well.

19. Learned counsel for the appellants have laid much stress on the fact that no independent witnesses were joined at the time of disclosure statements and recoveries in pursuance thereto.

The joining of independent witness is only by way of caution and not as a rule of law. The police officials can be as reliable and trustworthy as any other witness especially when there is nothing to suggest on record as to why the police would implicate the accused-appellants falsely or plant recoveries on them. Not only this, the factum of recovery of the car from the appellants is supported by enough cogent evidence on record.

20. It is legitimate and safe, therefore, to draw a presumption under Section 114 of the Evidence Act in the present case that the accused-appellants alone were the persons who committed the crime.

21. In the light of the aforementioned discussion, I do not find any merit in this appeal. The same is accordingly dismissed. The impugned judgment of conviction and order of sentence dated 21.01.2016 is maintained.

05.12.2018
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No