

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3266-SB of 2016
Date of Decision: 06.04.2018

Pawan Kumar

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Aditi Girdhar, Advocate (legal aid counsel)
for the appellant.

Mr. Neeraj Poswal, AAG, Punjab.

ANIL KSHETARPAL, J.

The appellant has been convicted by the learned trial Court under Section 392, 397 of the Indian Penal Code, 1860 and Section 25(1) (1B) (a) of the Arms Act, 1959.

The version of the prosecution has been narrated by the learned trial Court which is extracted as under:-

“In brief, it is the version of the prosecution that on 09.11.2014, when Ramesh Chand Assistant-Sub-Inspector was present on Sunari turn with government vehicle driven by Constable Tilak Raj, while being accompanied by E. Head Constable Mukhtiar, Constable Rajender, he was approached by Khursheed complainant with application Ex.PW4/A, alleging therein that complainant Khursheed was resident of village Ganiyara-Khurd alias Jhanda, Tehsil and Police Station Hathin, District Palwal (Haryana). Yesterday, i.e. on 08.11.2014, at about 8.15 P.M., the complainant was going to village Nizampur to meet his 'MOSA' (husband of his mother's sister) with motor-

cycle make Bajaj Discover of black colour bearing registration No.HR-52B-2517 and when he was about to reach Nizampur, two unknown persons aged 20-25 years having one motor-cycle make Pulsar without any registration number, got stopped the motor-cycle of the complainant by parking their motor-cycle in front of the motor-cycle of the complainant. One of them put country made pistol on the temple of the complainant and another snatched motor-cycle of the complainant and both of them took away motor-cycle of the complainant towards Bhiwari. Complainant tried to search his motor-cycle, but could not get the same.

After registration of the case, police started investigation. After completion of the investigation, report under Section 173 of the Code of Criminal Procedure, 1973, was submitted to the Court. Co-accused Sandeep is absconding and he could not be arrested and after his arrest, supplementary report under Section 173 of the Code of Criminal Procedure, 1973, would be submitted to the Court.”

After completion of the investigation, the challan was presented. The case was committed to the Sessions Court and accused was charge-sheeted under Section 228(1) (b) of the Code of Criminal Procedure. The appellant pleads no guilty and claimed trial.

Prosecution examined the following witnesses to bring home its case:-

1. PW-1, Constable Rajender Singh.
2. PW-2, Sher Mohammed son of Jasmal
3. PW-3, Sub-Inspector Kulbir who record the FIR.
4. PW-4, E-Assistant-Sub-Inspector, Ramesh Chand, Investigating Officer of the case.
5. PW-5, Head Constable Anil Kumar, Armourer.
6. PW-6, Inspector Prateek Kumar, who prepared report

under Section 173 of the Code of Criminal Procedure.

- 7. PW-7, complainant Khursheed son of Ash Mohammed.
- 8. PW-8, Bijender Singh, Ahlmad to District Magistrate, Mewat.

Prosecution also witnessed documentary evidence. The defence did not lead any evidence. After appreciation of evidence available on the file, learned Sessions Judge, Mewat found the appellant guilty of offences under Section 392, 397 of the Indian Penal Code and Section 25(1) (b) of the Arms Act, 1959. The Court sentenced the appellant as under:-

<i>Offence U/S</i>	<i>Sentence</i>	<i>Fine ₹</i>	<i>In default of payment of fine</i>
397 IPC	R.I. 7 years	75,000/-	S.I. nine months
25 (1) (1B) (a) Arms Act, 1959	R.I. 2 years	5,000/-	S.I. one month

This Court has heard the arguments of learned counsel for the appellant and the State of Haryana.

Learned counsel for the appellant has submitted that there was delay of 24 hours in registration of the FIR. She submitted that the alleged incident took place at 8.15 PM on 08.11.2014 whereas the FIR was registered on 09.11.2014 at 12.10 hours. She submitted that there is unexplained delay which cause a doubt in the story put forth by the prosecution. She has further submitted that no independent witness has been joined, although, the place of recovery is a public place. She has also submitted that evidence of the prosecution is discrepant with regard to time and place of disclosure allegedly made by the appellant which led to recovery of the motor-cycle, one country made pistol along with live cartridges. She submitted that this would also prove that the prosecution has failed to prove its case beyond reasonable doubt. She has further submitted that in the present case, Section 397 of the IPC is not attracted.

She has further submitted that the procedure adopted at the time of test identification report was not in accordance with law.

On the other hand, learned counsel for the State has submitted that there is no delay as the motor-cycle was snatched at gun point by the appellant-convict along with Sandeep. First of all, the complainant made sincere efforts to himself search the motor-cycle, however, on failure, he lodged his complaint with the police authorities. Hence, he submitted that delay stands explained. He has further submitted that efforts were made to join independent witnesses, however, none came forward. As regards the discrepancy in the disclosure statement, learned counsel for the State has submitted that the evidence of the witnesses was recorded after more than six months and therefore, some discrepancy was natural. He has submitted that in the present case, the motor-cycle was snatched after the country made pistol was placed near the temple of the complainant with the threat that either leave the motor-cycle or he would be killed. Hence, he submitted that the offences under Section 397 and 392 are made out. He has also drawn the attention of the Court to the orders of sentence where the Court has punished the appellant under Section 397 of the Indian Penal Code.

This Court has considered the respective argument of learned counsel for the parties and with their able assistance gone through the judgments passed by the Sessions Court and the evidence produced.

In the present case, the complainant has been examined as PW-7. He has deposed before the Court that on 08.11.2014, he was coming from Bhiwari and when he crossed the village Khori Kalan, two persons stopped their motor-cycle in front of the complainant and one person

brandished country made pistol on his temple saying calling upon him to leave the motor-cycle or he would be killed. He has further deposed that after having robbed his motor-cycle, both fled from the spot. He has further deposed that he searched for the motor-cycle but it was not found. Hence, he moved an application Ex.PW-4/A to the Police. The complainant identified the accused who was present in the Court. The complainant has also stated that after arrest of the accused, Police called him for test identification parade and he identified the accused. He has further deposed that the appellant was the same person who brandished country made pistol and robbed my motor-cycle with his co-accused. In these circumstance, this Court does not find that there was any unexplained delay in registration of the FIR.

Next argument of learned counsel for the appellant with regard to absence of independent witness. It is settled that in absence of failure to the prosecution to join an independent public witness is not always fatal to the case put forth by the prosecution. It would always depend upon the facts and circumstance of the case. In absence of joining of the independent public witness, the Court is to scrutinize the evidence with more care and caution.

Next argument of learned counsel for the appellant is discrepancy with regard to time, place and manner disclosed by the appellant. She has drawn the attention of the Court to the statement of Rajender Singh, Constable who has appeared as PW-1. He has disclosed that initially the appellant disclosed that the motor-cycle was kept in the house of Sandeep and country made pistol has been kept beneath the seat of the motor-cycle and when Police party along with the appellant reached at

the disclosed place, no motor-cycle was found. After the Court granted police remand on interrogation, the appellant suffered another disclosure statement Ex.PW1/B whereas he disclosed that motor-cycle, country made pistol and live cartridge have been hidden in the shurbs in hills of Rangala Rajpur near Rathibas road and got recovered the same.

On the other hand, attention of the Court has been to the statement of Ramesh Chand, the Investigating Officer wherein it has been stated that on 10.11.2014 when the appellant was on the way to the house of Sandeep and reached near Bhiwari turn, the appellant suffered another disclosure statement that he had hidden the robbed motor-cycle in the hills of Village Rangala. In the considered opinion of this Court, there is no discrepancy. Rajender Singh, Constable has specifically stated after getting the police remand from the Court on interrogation, the appellant disclosed the place where he had hidden the motor-cycle, country made pistol and live cartridge. The only discrepancy being pointed out is that on 09.11.2014, Rajender Singh has stated that on disclosure statement of the appellant, house of Sandeep, co-accused was raided where the motor-cycle was not found. Even PW-4, Assistant Sub-Inspector, Ramesh Chand has also stated that initially the appellant suffered a disclosure statement that he had hidden the robbed motor-cycle at the house of Sandeep.

Investigating Officer as well as the complainant have deposed that the test identification parade was conducted and the complainant identified the accused. In the Court also, the complainant identified the appellant-accused.

Next argument of learned counsel for the appellant is that ingredients of Section 397 are not made out. In this regard, it will be

noticed that the motor-cycle was snatched away by the appellant along with his accomplices who has been declared proclaimed offender when the appellant threatened to the complainant either to leave the motor-cycle or he would be killed while putting the pistol on his temple. Section 397 provides that if the offender used any deadly weapons or attempt to cause death at the time of committing robbery, Section 397 shall stand attracted.

In view of what has been discussed above, this Court does not find any good ground to find any substance in the appeal filed by the appellant.

Hence, the appeal is dismissed.

06.04.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No