

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-471-SBA-2004
Decided on : 11.09.2019**

State of Haryana

... Appellant(s)

Versus

Jafru and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.S. Pannu, DAG, Haryana
for the appellant.

Mr. Manoj K. Sood, Advocate
for respondent No.8.

MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment dated 07th October, 2003, passed by Addl. Sessions Judge, Faridabad (hereinafter referred to as the 'Ld. Trial Court'), whereby, the accused-respondents were acquitted of the charges under Sections 392 & 397 IPC, framed against them.

2. Prosecution case in a nutshell is that on 09th March, 1998 at noon, Manish Taneja – complainant along with one Santosh Mishra, was returning on a scooter from the State Bank of India (SBI), Ballabgarh, after withdrawing cash amounting to ₹ 2,25,000/-. The cash so withdrawn by the Manish Taneja – complainant had been put in a briefcase, which the complainant had in turn placed between his legs on the scooter. A motorcycle being ridden by two boys came from behind and before the complainant could realise, the assailants had managed to snatch the briefcase containing the aforementioned amount from in between the legs of the

Manish Taneja - complainant. Resultantly, the complainant lost his balance and both, the complainant and Santosh Mishra fell down from the scooter. The motorcyclists, after snatching the briefcase containing the cash fled away from the spot. It all happened so suddenly that neither Manish Taneja – complainant nor Santosh Mishra, could notice the registration number of the motorcycle. An FIR was thereafter registered under Section 382 I.P.C. on the statement of Manish Taneja, against unknown assailants. Subsequently, on 01st May, 1998, accused-respondents namely Bhopal Singh, Sukhbir Singh, Sukan, Man Singh @ Ajay, Ram Hari and Manbir @ Mannu were arrested in an another case FIR No. 143, dated 30th April, 1998, registered at Police Station Mujessar. During their interrogation, the aforementioned accused-respondents disclosed that they along with other accused-respondents namely Jafu and Manoj Bharti were involved in the occurrence that had taken place on 09th March, 1998. In consequence thereto, respondents Jafu and Manoj Bharti were arrested on 21st May, 1998. Thereafter, in pursuance to their respective disclosure statements, cash amount of ₹ 20,000/-, ₹ 4000/-, ₹ 3000/-, ₹ 10,000/-, ₹ 5000/- and ₹ 5000/- were recovered from the accused-respondents Bhopal Singh, Sukhbir, Sukan, Ram Hari, Manbir @ Mannu and Man Singh @ Ajay, respectively. The amount so recovered from the accused-respondents bore the seal of the SBI, Ballabgarh and was identified by the Manish Taneja – complainant. On 24th May, 1998, in pursuance to the disclosure statements of the accused-respondent Manoj Bharti, a sum of ₹ 50,000/- were recovered from his house, which too had the seal of SBI, Ballabgarh 1157. This recovery of cash of ₹ 50,000/- was identified by the Manish Taneja – complainant. The motorcycle bearing registration No. DDW 8020, which was allegedly used in

the occurrence was also recovered from the accused-respondent Manoj Bharti.

3. The accused-respondents were charge-sheeted for the offences under Sections 392 and 397 IPC. They pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined as many as six witnesses including the Manish Taneja – complainant as PW-1, besides, tendering into evidence all other relevant documents. The prosecution witnesses supported the case of the prosecution on all material facts.

5. The accused-respondents when examined under Section 313 Cr.P.C. denied all the incriminating evidence, which had come on record against them. The accused-respondents claimed false implication. In defence, the accused examined four witnesses, who deposed that the accused-respondents were innocent and had been falsely implicated by the police in the instant case.

6. On the basis of evidence adduced and other material on record before the Ld. Trial Court, the accused-respondents were acquitted of the offences charged with.

7. I have heard learned State counsel as well as the learned counsel for the respondents and reappraised the evidence and other material available on record.

8. The learned State counsel has vehemently argued that the Ld. Trial Court failed to appreciate the prosecution evidence in the right perspective despite the fact that there was sufficient evidence on record to hold the accused-respondents guilty for the offences charged with. He submitted that an adverse inference should have been drawn against the accused-respondents for their refusal to subject themselves to test

identification.

9. It is an admitted case of the prosecution that the assailants were two in number and were riding a motorcycle; they came from the rear side and snatched the briefcase containing the cash from in between the legs of Manish Taneja – complainant/PW-1 and fled away. It is also admitted on record that the entire occurrence was so sudden that the complainant was caught unawares, as a result of which, he lost his balance, fell down on the road and could not note down the registration number of the motorcycle. Not only this, it has also come in the testimony of the complainant that the assailants were wearing helmets at the time of the alleged occurrence. If that is so, it is indeed strange as to how the complainant could have identified the accused-respondents in the Court. Not only this, no description, whatsoever, much less, the physical features of the assailants, was given by the complainant in the First Information Report lodged by him. It was, thus, highly improbable for the complainant to be able to identify the assailants. In fact, the identification of the accused-respondents in the court itself is suspect, more so, when it has been admitted by the complainant – Manish Taneja/PW-1 in his cross-examination that he had been shown the accused-respondents in the Police Station after they were arrested. The identification of the accused-respondents in the Court in the light of the deposition of the complainant cannot thus be relied upon and has no legal sanctity. It definitely casts a serious dent in the case of the prosecution. No adverse inference can be drawn for the refusal of the accused-respondents to join the test identification parade.

10. Still further, the role of all the accused-respondents except Manoj Bharti, in another case FIR No. 143, dated 30th April, 1998, registered

at Police Station Mujessar and their disclosure statements suffered as Ex.PC to Ex.PH and Ex.PF, to the effect that they all were involved in the occurrence dated 09th March, 1998, when the briefcase containing ₹ 2,25,000/- was snatched from the complainant, cannot be taken into consideration and deserves to be discarded as the same is hit by Section 27 of the Indian Evidence Act, 1872. The statements are in the nature of confessions made before the police, which would be inadmissible *per se*.

In the light of the disclosure statements Ex.PC to Ex.PF, in pursuance to which the role and complicity of the accused-respondents came to light, there is no other of evidence led by the prosecution *qua* the complicity and role of the accused-respondents namely Jafu, Sugan, Sukhbir @ Satbir, Bhopal Singh, Ram Hari, Manbir @ Mannu and Man Singh @ Ajay, in the alleged occurrence. If we go through the length and breath of the prosecution evidence, there are gaping holes at every step *qua* which no credence can be attached.

11. To cut short the matter, I have no hesitation to conclude that there is no legal evidence on record to hold the accused-respondents guilty of the offences charged with. Hence, no interference is warranted in the impugned judgment of the Ld. Trial Court, which deserves to be upheld, as the same is a well reasoned one. Consequently, the instant appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 11, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No