

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi
&
The Hon'ble Justice Suvra Ghosh

C.R.A. 296 of 2018
with
C.R.A.N 2673 of 2019
Aloke Biswas @ Bapi & Anr.
-vs-
The State of West Bengal & Anr.

For the Appellants : Ms. Anusua Sinha,
Ms. Jonaki Saha

For the State : Mr. Sudip Ghosh
Mr. Bitasok Banerjee

Heard on : 03.09.2020

Judgment on : 03.09.2020

Joymalya Bagchi, J.:

The appeal is directed against the judgment and order dated 30.01.2018 and 01.02.2018 passed by the learned Additional Sessions Judge, Ranaghat, Nadia in Sessions Case NO.9(5)2013 and S.T. no. 2(7)2013 convicting the appellants for commission of offence punishable under Sections 392 and 411 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for a period of ten years each and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for six months more for the offence punishable under

section 395 of the Indian Penal Code and to suffer rigorous imprisonment for three years each and to pay a fine of Rs.2000/- for the offence under Section 411 of the Indian Penal Code. Both the sentences run concurrently and fine amount, if realized, be paid to the *de facto* complainant. By the selfsame judgment and order, co-accused Krishna Mondal was convicted and sentenced under Section 411 of the Indian Penal Code and two other accused persons, namely, Ajit Das @ Christian Babu and Subrata Biswas who are convicted for the charges levelled against them.

Prosecution case as alleged against the appellants and other accused persons is to the effect that in the midnight between 15.12.2012/16.12.2012 at about 1:15 hours, five masked unknown men entered the house of one Tentul Ghosh, P.W.1 by breaking the lock of the collapsible gate, thereafter, they assaulted Tentul Ghosh and other family members; snatched the key of the almirah and took out gold ornaments, other articles and documents from the almirah. Then, they left with the motorcycle bearing No. WB 52-C4218 belonging to Tentul Ghosh. On hearing hue and cry, local people arrived at the spot. The miscreants were aged between 18 and 25 years. They were wearing jeans and jacket and three of them were speaking in Hindi and two were speaking in Bengali. It was noticed 40 bhories of gold ornaments, cash of Rs.35,000/- were stolen along with the motorcycle. First Information Report was lodged by Tentul Ghosh, PW 1.

In the course of investigation, the appellants were arrested near a hotel named and styled as “Maa Hotel” and upon their leading statement golden wristband (Mat Ext.I) and sum of Rs.13,000/- was recovered from the residence of appellant no.1. Pursuant to the statements of the appellants, other accused

persons including Krishna Mondal, Ajit Das @ Christian Babu and Subrata Biswas were arrested. From the residence of Krishna Mondal gold chain (Mat Ext.V) was recovered. Cash was also recovered from other accused persons.

In the course of test identification parade, P.W.2 identified the appellants. In conclusion of the investigation, charge-sheet was filed and charges were framed under Sections 395/ 397/ 412 of the Indian Penal Code and under section 27 of the Arms Act. The appellants and other accused persons pleaded not guilty and claimed to be tried.

The prosecution examined 17 witnesses and exhibited a number of documents. Stolen articles including gold wristband and gold chain and motorcycle, etc. were exhibited as material exhibits. In conclusion of trial, the Trial Judge by the impugned judgment and order dated 30th January, 2018 convicted and sentenced the appellants, as aforesaid.

Ms. Sinha with Ms. Saha, learned advocates appearing for the appellants argue that the prosecution case is wholly hinged on the sole evidence of PW 2. Identification of PW 2 of the appellants is improbable as their faces were covered. It is further submitted that the recovery of the stolen articles have not been supported by independent witnesses and identification of the articles by the witnesses also suffers from various defects. Conduct of PW2 in refusing to go for test identification parade of other accused persons particularly, Ajit Das @ Christian Babu and Subrata Biswas throw serious doubt with regard to her identification of the appellants.

On the other hand, Mr. Ghosh, learned advocate appearing for the State argues that the evidence of PW2 does not suffer from any embellishment or contradiction. She could identify the appellants as the face of one of the

miscreants was uncovered during the incident and subsequently all the accused persons took out food from the refrigerator and ate giving opportunity to PW2 to identify them by face. Recovery of gold ornaments has been proved beyond doubt and one of the ornaments was identified by PW2 in the course of TI parade and in Court while the other ornament was identified by PW 1 and his uncle, PW 11, who claimed to have gifted it to the family of PW 1. Hence, the case has been proved beyond doubt.

On analysis of the evidence on record, it appears that the Trial Court while discounting the evidence of PW 1 and his parents PW 3 and PW 5 relied on the evidence of PW 2, wife of PW 1, with regard to the role of the appellants in the incident. Hence, I have chosen to analyse the evidence of PW2 to assess the veracity of such conclusion.

PW 2 deposed at about 1.00/1.30 a.m. on 15/16.12.2012, two/three persons entered their house and pushed her husband inside the room. They pointed gun at his mouth and took the key of almirah. From the almirah they removed gold ornaments totally 40 bhories, cash of Rs.35,000/- to Rs.36,000/- and left with her husband's motorcycle. Initially, their faces were covered. During robbery, the cover on the face of one of the miscreants fell off and after committing the offence, the accused persons took out food from the refrigerator and ate. At that time, their faces remained uncovered.

Aforesaid version of PW 2 remained unshaken in cross-examination. That apart, her narration finds corroboration not only from the evidence of the inmates of the house, namely, PW1, PW3 and PW5 but also from post-occurrence witnesses namely, PW4 (cousin of PW 1), PW 11 (uncle of PW 1) and a local witness PW 6 who rushed to the spot and heard about the incident.

Hence, the manner and course in which the robbery occurred as coming out from the mouth of PW2 appears to have been proved beyond any shred of doubt. With regard to the identity of the appellants, PW 2 deposed the incident occurred for more than one hour. Hence, she had ample opportunity to see the appellants. She also explained the manner in which she was able to identify them as the cover from the face of one of the miscreants had fallen down during robbery and all the miscreants took off their masks while taking out food from the refrigerator and eating it.

PW2 identified the appellants during TI Parade which was conducted by PW 12 who proved the TI Parade sheet (exhibit 12). His evidence shows all precautions had been taken to hide the identity of the appellants and identification parade held on 02.01.2013 shortly after the arrest of the appellants. PW 2 subsequently identified the appellants in Court too.

In the light of the aforesaid facts, I have no reason to differ from the conclusion of the Trial Court that the evidence of PW 2 is clear, cogent and reliable with regard to role of the appellants in the robbery. Identification of the appellants during test identification parade and in Court by PW 2 does not suffer any infirmity. It is the quality not quantity of evidence which is relevant while assessing guilt of an accused. Evidence of PW 2, for reasons discussed above, inspires confidence and I find it appropriate to rely on her deposition which receives corroboration from other witnesses to come to the conclusion that the appellants had committed the robbery in the house of Tentul Ghosh, PW 1 on the fateful night.

In addition thereto, stolen articles were recovered from the house of appellant no.1 as would appear from the deposition of PW14, first investigating

officer. PW 14 deposed he had arrested the appellants. Upon their arrest, pursuant to the leading statements of the appellants, cash of Rs.13,000/- and a gold wrist-band (Mat Ext.I) was recovered from the residence of appellant no.1 under a seizure list (Ext.8).

PWs 10 and 12, constables attached to the P.S. corroborated the evidence of recovery.

P.W 8, independent witness to the seizure appears to have turned hostile. He, however, identified his signature on the seizure list. He was cross-examined at length with regard to his earlier statement to police exposing his prevaricating stance in the matter. In addition thereto, PW 17 Anup Pal, third investigating officer on the leading statement of co-accused Kishore Mondal recovered the gold chain (Mat Ext 5) which was identified by PW 2 in Court as well as in course of test identification parade (Ext 13) held by PW 15. Gold wristband (Mat Ext 1) recovered pursuant to the leading statements of the appellants was identified by PW 1 in court. PW 11, uncle of PW 1, also identified it and deposed that he had gifted the gold article to the family of PW 1.

In the light of the aforesaid evidence, recovery of stolen articles from the appellants soon after the robbery has also been proved beyond reasonable doubt.

In the light of the discussion as aforesaid, I uphold the conviction recorded against the appellants.

Coming to the issue of sentence, I note that maximum sentence has been awarded to them on the score of committing robbery. No prior conviction of the appellants has been proved in the present case. They are in custody for more than 7 years 8 months.

Balancing the aggravating and mitigating factors, I modify the substantive sentence imposed on the appellants for the charge punishable under section 392 IPC and direct they shall suffer rigorous imprisonment for the period already undergone. Sentence of fine imposed on them on such score shall remain unaltered. Sentence with regard to offence punishable under section 411 IPC shall also remain unaltered and both the sentences shall run concurrently.

With the aforesaid modification as to sentence, the appeal is disposed of.

The period of detention suffered by appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with Lower Court Records be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)