

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 54 of 2019
With
CRAN 2 of 2019 (Old CRAN 2812 of 2019)
With
CRAN 3 of 2021
Laltu Sk. & Anr.
-Vs-
The State of West Bengal
With
C.R.A. 158 of 2019
Tajamul Hoque @ Sk.
-Vs-
The State of West Bengal

For the Appellant : Mr. Tapan Dutta Gupta, Adv.
Mr. Musharaf Alam Sk., Adv.
Mr. Parvej Anam, Adv.

For the State
In CRA 158 of 2019 : Mr. Swapan Banerjee, Adv.
Ms. Purnima Ghosh, Adv.

For the State
In CRA 54 of 2019 : Mr. Binay Panda, Adv.
Mrs. Puspita Saha, Adv.

Heard on : 10.05.2022

Judgment on : 10.05.2022

Joymalya Bagchi, J. :-

Appeals are directed against the judgment and order dated 29.08.2018 and 30.08.2018 passed by the learned Additional District &

Sessions Judge, 5th Court, Malda in Sessions Trial Case No.70 of 2017 arising out of Sessions Case No.287 of 2017 convicting the appellants and one Sreemanta Karmakar @ Chandan Karmakar and Uttam Singh for commission of offence punishable under Sections 395/397/412 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for ten years each and to pay a fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for six months more for the commission of offence punishable under Section 395 of the Indian Penal Code, to suffer rigorous imprisonment for seven years each for the offence punishable under Section 397 of the Indian Penal Code and to suffer rigorous imprisonment for seven years each and to pay a fine of Rs.10,000/- each, in default, to suffer further rigorous imprisonment for six months each for the offence punishable under Section 412 of the Indian Penal Code; all the sentences to run concurrently.

During the pendency of the appeals, convict Sreemanta Karmakar @ Chandan Karmakar has taken out an application being CRAN 3 of 2021 seeking himself to be added as an appellant in these appeals.

The application being CRAN 3 of 2021 filed on behalf of the convict Sreemanta Karmakar @ Chandan Karmakar is allowed. He is permitted to assail the aforesaid judgment and order of conviction and sentence in these appeals.

Prosecution case against the appellants is to the effect that on 28.02.2017 around 7.30 p.m., appellants and one Uttam Singh had come in two motor cycles and committed dacoity in a petrol pump named and styled as “Coco Milki to Manikchak, Indian Oil Corporation Ltd.” Petrol pump was owned by one Smt. Iti Biswas (P.W.13). In the course of dacoity, one of the miscreants brandished a revolver while another held out a knife. They stole Rs.85,000/- from the cash counter and also took away a black coloured bag bearing the name of the company containing Rs.5,000/-. They also snatched a mobile phone of one Gopal Karmakar, nozel man of the pump, money bag belonging to Rupendra Mondal, an employee of the pump as well as the bill books, cash memo and other documents of the pump. They also took away a black coloured helmet. Before leaving they put all the employees in a room and locked it from outside. The employees of the pump broke the glass door of the room and informed the owner. Pulak Kumar Jha (P.W.2), Manager of the pump lodged written complaint resulting in registration of Manikchak Police Station Case No.88 dated 01.03.2017 under Section 392 IPC. In course of investigation, Section 395 IPC read with Section 397 IPC were added to the array of offences in the first information report. Appellants were arrested and on their leading statements, a pipe gun, bills, cash memos and other documents of the petrol pump and helmet were recovered. Appellants were also identified in course of Test Identification Parade by Rupendu Mandal (P.W.1) and

Sk. Saim Hossain (P.W.4), another employee of the petrol pump. In conclusion of investigation, charge sheet was filed against the appellants and co-accused Uttam Singh. Charges were framed under Sections 392/395/397 IPC and under Section 412 IPC against them. Appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 17 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. In conclusion of trial, trial Judge by judgment and order dated 29.08.2018 and 30.08.2018 convicted and sentenced the appellants including Sreemanta Karmakar @ Chandan Karmakar and one Uttam Singh, as aforesaid.

Mr. Tapan Dutta Gupta, learned Advocate appearing for the appellants argues prosecution case has developed in stages. In the first information report, P.W.2 stated there were four miscreants but in court prosecution witnesses claimed five persons had committed dacoity. Theft of bill books and cash memos of the petrol pump is not reflected in the first information report. It is possible the articles were planted to falsely implicate the appellants in the crime. Although, it is alleged Rs.85,000/- in cash was stolen, meagre amounts were recovered from the possession of the appellants. Test identification parade also suffers from infirmities and identification of the appellants in court is not beyond reproach. Prosecution case has not been proved beyond doubt and appellants are entitled to an order of acquittal.

Mr. Swapan Banerjee and Mr. Binay Panda, learned Senior Government Advocates appearing for the State submit P.Ws.1 to 4, employees of the petrol pump had identified the appellants. One of the miscreant was standing outside the petrol pump. As a result, P.W.2 incorrectly described the number of miscreants as four in the first information report. Such inadvertent error would not erode the consistent evidence on record that five miscreants committed dacoity at the petrol pump. In course of test identification parade, P.Ws.1 and 4 identified the appellants. On the leading statements of the appellants which were proved in Court, Investigating Officer (P.W.17) recovered stolen articles including firearm which were produced and identified during trial. Hence, the prosecution case has been proved beyond doubt.

P.W.1 to 4 are the employees of the petrol pump.

P.W.1. Rupendu Mandal deposed appellants had come to the petrol pump in two motor cycles. One of the motor cycle was of model Apache white in colour and the other was of model Bajaj Pulsar, black in colour. They took oil from the petrol pump. Thereafter four of them entered the room and one of them waited outside the petrol pump. One of the miscreants took out a revolver and another had a knife in his hand. They threatened P.W.1 and other employees and took cash of Rs.80,000/- from the counter and Rs.5,000/- which was kept inside in a black bag. They also took the mobile phone of Pulak Jha and that of

Gopal Karmakar. They confined P.W.1 and others in a room and fled the spot. Police came to the place of occurrence. They seized broken glass from the place of occurrence and a black bag. He identified his signature on the seizure list. He identified the appellants in course of test identification parade.

P.W.2, Pulak Kumar Jha was the Manager of the petrol pump. He corroborated P.W.1 and stated miscreants had snatched Rs.80,000/-. They took another Rs.5,000/- kept inside the bag of nozel man, Gopal Karmakar which had the name of the company printed on it. They also took the mobile phone of nozel man as well as money bag of P.W.1. Bag of the nozel man contained cash memo book. The miscreants had also taken sample labels, papers lying in the cash counter along with a helmet. They were confined in a room by the dacoits. After departure of the dacoits, P.W.2 and others broke the glass door of the room where they had confined. They informed Iti Biswas and Sudharshan Singha. He lodged written complaint at police station. He also signed on the seizure list.

P.W.3, Gopal Karmakar, nozel man corroborated the version of P.Ws.1 and 2.

P.W.4, Sk. Siam Hossain, another employee of the petrol pump deposed appellants had come to the petrol pump in two motor cycles. They took fuel from the petrol pump. Thereafter they committed dacoity by showing pipe gun and threatening to kill them. He could see the

miscreants by the light of the petrol pump. He further deposed that he had identified the appellants in course of test identification parade.

P.Ws.14 and 15 are the Judicial Magistrates who conducted test identification parade in the present case.

P.W.14 deposed on 24.07.2017 she conducted test identification parade in respect of Sreemanta Karmakar @ Chandan. P.W.1, Rupendu Mandal and P.W.4, Sk. Siam Hossain identified Sreemanta Karmakar @ Chandan as one of the miscreants. On 07.06.2017 she again held test identification parade with regard to Uttam Singh. Aforesaid witnesses identified Uttam Singh in course of test identification parade. She proved the test identification reports viz., Exhibits 10 and 11. Neither the suspects nor witnesses had raised any objection during the course of test identification parade.

P.W. 15, Sumana Garain, the other Judicial Magistrate conducted test identification parade in respect of Tajamul Hoque @ Sk. and Laltu Sk. on 24.03.2017.

P.Ws 1 and 4 again identified the aforesaid appellants in the course of test identification parade. On 01.04.2017 these witnesses identified the appellant Sayed Ali @ Chhatu during test identification parade. P.W. 15 proved the test identification reports marked as ‘ Exhibits-12 and 13’.

P.W. 13, Iti Biswas is the owner of the petrol pump who deposed she received intimation with regard to dacoity from her employees and advised them to report the matter to the police station.

P.W. 16, SI Kunal Kanti Das was the Officer-in-Charge of Manikchak Police Station. He deposed on 01.03.2017 he received written complaint from Pulak Kumar Jha (P.W. 2) and drew up F.I.R.

From the evidence of the aforesaid witnesses it is clear the appellants along with Chandan Karmakar and Uttam Singh had come to the petrol pump owned by P.W. 13 in two motor cycles. They filled petrol in the motor cycles. Thereafter four of them went inside the room where cash was handled. One stood outside the petrol pump. One of the miscreants had a revolver and another showed a knife. They threatened the employees and took away Rs.80,000/- from the cash counter. A bag bearing the emblem of the company containing Rs.5,000/- was also snatched. Bag of the Sk. Siam Hossain (P.W. 4) containing cash memo and other sample labels bearing the name of the company was taken away. Miscreants also took away mobile phones and a helmet.

Mr. Dutta Gupta, learned Counsel appearing for the appellants submits P.Ws. 1 to 4 are not reliable. P.W. 1 claimed four miscreants had come to the spot but in Court embellished his versions and stated five persons committed the dacoity.

It is also argued theft of cash memo etc. have not been reflected in the F.I.R. Evidence of the witnesses show a daring dacoity was committed around 07.30 p.m. in the petrol pump. Five persons had come in two motor cycles. After filling petrol four of them proceeded in a room where the cash was handled while the other kept guard outside the petrol pump. Cash and various articles were stolen. Employees including the Manager, (P.W. 2) were confined in a room and locked from outside by the dacoits. After the dacoits fled, they broke open the glass door and came out. P.W. 2 informed the owner of petrol pump (P.W. 13) and, on her instruction, lodged complaint. In this backdrop, it is possible P.W. 2 had inadvertently referred to four persons in the F.I.R. as those persons had come to the cash counter and snatched away the money. He was at the cash counter and inadvertently may have failed to disclose the presence of the fifth person who was standing guard outside. F.I.R. was lodged at the earliest opportunity and a detailed inventory of stolen articles may not have been prepared by then. Only the most valuable articles namely cash of Rs.85,000/-, mobile phones etc. were reported. It is trite law F.I.R. is not an encyclopedia of the facts. When the deposition of the witnesses who have given a more elaborate and graphic description of the incident including the articles stolen during trial is in substantial corroboration with the contents of the F.I.R., failure to give exact number of miscreants or a complete list of stolen articles in the written complaint

treated as F.I.R. cannot be a ground of throwing out the prosecution case.

In the present case, all the witnesses had ample opportunity to see the appellants who committed dacoity. They deposed the miscreants were not wearing the helmets and there was sufficient light in the petrol pump to identify them. Test identification parade was held by P.Ws. 14 and 15 wherein P.Ws. 1 and 4 identified all the appellants. No objection was raised by the appellants in the course of the test identification parade with regard their identification.

In this backdrop, I am of the opinion identification of the appellants as the miscreants who committed dacoity in the petrol pump on the fateful evening is fully established.

In addition thereto, investigating officer deposed upon arrest of the appellants they made statements leading to the recovery of stolen articles. Recovery of the stolen articles from the appellants have been corroborated by independent witnesses. Bhanu Mahalder and Alope Dev (P.Ws. 5 and 6) deposed on the showing of Srimanta Karmakar @ Chandan Karmakar, pipe gun, money and bills of the petrol pump were recovered from his residence. White coloured Apache RTR motorcycle was also recovered. They proved their signatures in the seizure list prepared by SI, Gopinath Tudu (P.W. 17) in connection with the aforesaid seizure. Farid Sk. and Moktar Ali (P.Ws. 7 and 11) deposed on the showing of the appellant, Tajamul Hoque @ Sk. Investigating officer

recovered bag bearing the emblem of the company with Rs.5,000/- and bill book. They also proved their signatures on the seizure list. From the house of the one Hider a relation of appellant Laltu Sk. a helmet and cash were recovered. Recovery was witnessed by Md. Samed Ali and Rahaman Habibur (P.Ws. 8 and 9) who supported the prosecution case in the court. Mofajul @ Fajul Hoque (P.W. 10) spoke of recovery of bills of the petrol pump and cash on the showing of the appellant Sayed Ali @ Chhatu. All the Stolen articles were produced in court and identified by the aforesaid witnesses including the investigating officer.

It is argued P.Ws. 1 and 4 have not identified the articles. In view of the overwhelming evidence on record showing that the stolen articles were recovered at the behest of the appellants in the presence of independent witnesses who supported the seizure and identified the articles in court, I am of the opinion failure to identify the articles by P.Ws. 1 and 4 does not affect the credibility of the prosecution case.

He is finally argued meager cash was recovered from the appellants which does not support the prosecution case of dacoity over Rs.85,000/-. From the evidence on record, it appears cash over Rs.85,000/- was stolen from the petrol pump. Nature of business in the petrol pump does not render the prosecution case improbable. No question had also been put to P.Ws. 1 to 4 or 13 to improbabilise availability of heavy amount of cash in the petrol pump. It is common knowledge cash can easily be transferred and secreted through

unknown sources. In this backdrop, failure of the investigating agency to trace out the cash stolen by the miscreants may be remissness of investigation but would not render the prosecution case suspect.

In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellants as well as Sreemanta Karmakar @ Chandan Karmakar who has been added as an appellant in these appeals.

Both the appeals are, accordingly, dismissed.

In view of dismissal of both the appeals, connected application being CRAN 2 of 2019 (Old No. CRAN 2812 of 2019) is also dismissed.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)