

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 463 of 2009

Mintu Sk *alias* Mustafa

-Vs.-

The State of West Bengal

For the appellant	:	Mr. Ayan Bhattacharyya, Mr. Apalak Basu
For the State	:	Mr. Saswata Gopal Mukherji, Ld. P.P., Mr. Sourav Chatterjee.
Heard on	:	11.04.2022, 28.04.2022, 05.05.2022 12.05.2022 & 17.05.2022
Judgment on	:	19.05.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 07.05.2009/08.05.2009 passed by the Learned Additional District and Sessions Judge, 5th Fast Track Court, Malda in connection with Sessions Trial No. 16(3)/2007 arising out of Sessions Case No. 80/2007 wherein the learned Trial Court was pleased to convict the appellant and others for offences punishable under Sections 395/397/412 of the Indian Penal Code.

On the basis of a complaint lodged by Sk. Manuarul with the Officer-in-Charge, Ratua Police Station, Malda, Ratua Police Station Case No. 163/2006 dated 27.08.2006 was registered for investigation under Section 395/397/412 of the Indian Penal Code. It was alleged in the letter of complaint that when the complainant was returning with sand loaded truck to Chanchol in the night of 26th/27th August, 2006 at about 12.30 a.m. in between Sripur and Bhagabanpur of Ratua Police Station a log of tree was laid across the road and a van rickshaw stood with passenger. As the truck slowed down 3/ 4 unknown persons got into the truck and pointed a pistol at the head of the complainant and asked him to handover all the money and threatened that in the alternative he would be killed. The said unknown persons were carrying pistol, knife and big iron rods with them and when the complainant refused to provide any money they punched and threatened to commit murder and in order to save his life the complainant handed over Rs. 4,000/- and they also snatched away the empty money purse. The identifying feature of the money purse was that it was black in colour and the name of the complainant, Manuarul was written with a nail polish. The miscreants thereafter asked the complainant to stop the car and when another truck bearing No. HR-47/2767 came and stop there the miscreants started assaulting the driver and khalasi of the said truck and dragged them down from the truck. They also threatened and snatched away their mobile phone and money later it was known that the driver of the said vehicle was one Jasbindar Singh and Khalasi was one Durbindar Singh. It was stated by the driver and Khalasi that the miscreants

snatched Rs. 9,000/- in cash and a TATA INDICOM mobile phone. The robbers also stopped a tractor bearing No. WB65-8071 and snatched Rs. 500/- and Rs. 1520/- from the driver and the passenger. The name of the driver of the tractor was Ajjur Hossain and the passenger was one Humayun Kabir. Many other cars came from Gazole and the miscreants snatched money from them and also detained them. After police was informed they rushed to the place of occurrence when the miscreants saw the police at a distance they started escaping towards railway track towards south. The complainant alleges that the miscreants were aged between 22 to 25 years, were speaking Bengali and Hindi language, having medium height, wearing pant and shirt and were 8/9 in number. The complainant prayed for punishing the accused persons as per Law.

The police authorities on completion of investigation submitted charge-sheet under Sections 395/397/412 of the Indian Penal Code. Such charge-sheet was submitted on the basis of evidence collected by the Investigating Agency and 20 witnesses were relied upon by the Investigating Agency. The present case was committed to the Court of Sessions and was finally transferred to the Learned Additional District and Sessions Judge, 5th Fast Track Court, Malda for trial and disposal. The learned Trial court was pleased to frame charges under Sections 395/397/412 of the Indian Penal Code read with Section 25 and 27 of the Arms Act against the appellant and five others. The prosecution in order to prove its case relied upon 16 witnesses and number of documents, while the defence examined two documents.

Without going into the details of the evidence in this case, at the inception the following factors are taken into consideration for deciding this appeal. The learned Trial Court while delivering its judgment was pleased to observe as follows:

“It, however, appears that although charge has been framed against the accused persons u/s 25/27 Arms Act aso a separate case under Arms Act has been started which has been tried simultaneously with this sessions case and relevant sanction accorded by competent authority for submitting prosecution under Arms Act is not lying with this record. As such, I am inclined to hold that prosecution has not been able to prove the allegation under provision of Arms Act against the accused persons.”

No appeal was preferred against the said observation of the learned Trial Court, thus the issue regarding the applicability of the Arms Act was not taken into consideration. In respect of the five other convicts in CRA 361/2009 arising out of the same Ratua Police Station Case No. 163/2006 the Coordinate Bench was pleased to allow the appeal granting liberty to the appellant.

Mr. Bhattacharyya, learned Advocate empanelled with the High Court Legal Services Authorities representing the appellant submitted his oral arguments as well as filed written notes of arguments and emphasised that it has been categorically held by the Coordinate Bench in CRA 361/2009 that the testimony of the witnesses were unreliable and such testimony was held to be unsafe for convicting the said appellants and as such they were acquitted, thus, the present appellant is entitled to the benefit of doubt. Learned Advocate

to that extent relied upon the judgment of the Hon'ble Supreme Court in Ram Laxman -Vs. - State of Rajasthan, (2016) 12 SCC 389. Learned Advocate also argued on the issue of charge under Section 412 of the Indian Penal Code and submitted that PW1 failed to identify the purse. The recovery of the purse was never subsequent to the leading statement of the appellant under Section 27 of the Indian Evidence Act. The ownership of the place from where the seizure was affected was never substantiated, the seizure witnesses turned hostile and lastly the description of the purse as deposed by the Investigating Officer when compared with that mentioned in the FIR do not match.

The learned Public Prosecutor appearing for the State submitted that the investigation was in respect of a robbery committed at gun point where the victims were snatched and robbed of money and other essentials. According to him, PW4, Humayun Kabir identified the present appellant in Court and such identification was never challenged in the cross-examination. There was no cross-examination on the point of recovery of the money bag and the recoveries made therefrom. There are overwhelming evidence that the black coloured money bag seized, belonged to PW4 and was snatched at the time of dacoity and the same was recovered from the house of Sk. Mintu (appellant), who was absconding for a considerable period of time and such recovery was on the basis of disclosure statement of accused Amjad Ali, which has been corroborated by the Investigating Officer of the case. Lastly, it was stated that the prosecution has proved the case beyond reasonable doubt and as such there is no illegality in a judgment and order of conviction and sentence passed

by the Learned Trial Court, so far as the present appellant is concerned and the same as such should not be interfered with.

In view of the submissions advanced by the appellant as well as the prosecution, I have considered the statement under Section 27 of the Evidence Act of one Amjad Ali which according to the learned Public Prosecutor was a disclosure statement leading to recovery and marked as Ext.15 by the learned Trial Court. The accused stated that he had snatched a black coloured money bag containing Rs. 1520/- and after taking out the sum of Rs. 1520/- from the said money bag he had thrown it in the road. The accused further stated that if he is taken to the place where he had thrown the money bag, he would be able to recover the same. All the seizure lists appearing in evidence were checked and it was found that only Ext.8 is the seizure list where the recovery of a money bag has been referred to. The description of the articles seized in the seizure list is as follows:

“Description of article seized:- One brown coloured money bag in which inside of it written “Manuarul” in red coloured nail polish.”

The place of seizure in the seizure list is set out as follows:

“Place of seizure:- In the bed room of accused Mintu S/o. Mostaque Ali of Chunakhali, Paranpur, PS- Ratua, Dist- Malda.”

Having regard to the difference in the disclosure statement regarding the place of recovery as is reflected in the seizure list as well as the description of the money bag, I am of the opinion that the argument advanced by the State is

not acceptable. The other evidence has already been appreciated by the Coordinate Bench in CRA 361/2009. In view of the aforesaid, I am of the opinion that the order of conviction and sentence so passed by the learned trial Court in respect of the offences under Sections 395/397 of the Indian Penal Code and under Section 412 of the Indian Penal Code calls for interference and is hereby set aside.

Accordingly, CRA 463 of 2009 is allowed, the appellant is acquitted by the charges levelled against him.

Records reflect that the appellant was granted bail on 01.12.2009, as such he is discharged from the bail bonds.

Department is directed to send back the Lower Court Records and intimate the judgment to the learned Jurisdictional Court.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)