

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

316

CRA-S-1304-SB-2002
Decided on : 21.12.2022

Krishan and others
Versus
State of Haryana
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate
for the appellant.
Mr. Ashish Yadav, Addl. AG, Haryana.

SANJAY VASHISTH, J.

Three appellants namely Krishan Kumar (22 years), Subhash (27 years), and Rupesh @ Banti (26 years) (hereinafter referred to as ‘the accused’), have filed present appeal against the judgment of conviction and order of sentence dated 02.08.2002, passed by Ld. Addl. Sessions Judge, Sonipat, in Session Case No.04, dated 18.01.2000, arising from FIR No. 129, dated 12.09.1999, under Sections 392, 397, 420 of IPC, registered at Police Station Kharkhoda, District Sonipat.

2. Appellants were convicted and sentenced as under:-

Name of Convict	Under Section	Sentence	Fine	In Default
Krishan	392 IPC	07 years RI	Rs. 5000/-	01 year RI
	397 IPC	10 years RI	Rs. 10000/-	02 years RI
Subhash	392 IPC	07 years RI	Rs. 5000/-	01 year RI
	397 IPC	10 years RI	Rs. 10000/-	02 years RI
Rupesh alias Banti	392 IPC	07 years RI	Rs. 5000/-	01 year RI
	397 IPC	10 years RI	Rs. 10000/-	02 years RI

All the sentences are ordered to run concurrently.

3. Case launched by the prosecution is that on 12.09.1993, SI/SHO, Ramphal, posted at P.S. Kharkhoda, was present at Rohtak road. Meanwhile, complainant Ravinder Kumar came and got recorded his statement (Ex.PK) to the effect that at about 09:30 PM, he had gone along with Raj Singh to village Farmana, on his motorcycle for making a telephonic call. When they were at Gohana road, after covering the distance of about 2/3 acres from village Farmana, a Maruti car obstructed them, two young boys alighted from the car and pointed a pistol towards him. While pointing pistol, motorcycle was snatched from the complainant, which was purchased by him about 2/3 months back. On the basis of said statement recorded as Ex.PK, FIR was registered against the unknown persons. After visting the spot, rough site plan of the place of occurrence was prepared as Ex.PN.

In the statement of the complainant, registration number of the Maruti car or of the motorcycle were not mentioned.

4. Though, there was no clue with the police, yet on 08.10.1999, a telephonic message was received from CIA Staff, Panipat that the persons, who snatched the motorcycle in this case, have been arrested by them. Thereafter, custody of the accused was obtained from CIA Staff, Panipat, and were interrogated on 09.10.1999.

5. Accused – Krishan Kumar, made a disclosure statement (Ex.PG) regarding the commission of crime in the company of other two accused, and that the said motorcycle was sold out through Batra Trading Company, Gurgaon to one Mahesh Kumar of Anita Poultry Farm, Gurgaon, for a sum of Rs.21,000/-. Weapon of offence had already been recovered by the Panipat police in other case. Accused – Krishan pointed out the place of occurrence, and memo Ex.PG/1 was prepared.

Accused – Subhash was interrogated, and his disclosure statement was also got recorded as Ex.PH. In the said disclosure statement, manner of commission of crime was detailed, and place of occurrence was pointed out, and that he can get the motorcycle recovered. Thereafter, memo Ex.PH/1, of place of occurrence as pointed out by him, was prepared. On the basis of disclosure statement, police has shown the recovery of the motorcycle from Anita Poultry Farm, Gurgaon, and took the same in possession vide memo Ex.PJ.

Accused Rupesh @ Banti also made his disclosure statement Ex.PA, that he along with co-accused - Krishan and Subhash had snatched the motorcycle. Other similar details of the place of crime were given by this accused also.

6. Thereupon, after completion of investigation, report under Section 173 Cr.PC was submitted to the concerned Court, which was further committed for trial of the accused.

On finding of a *prima facie* case, accused were charge-sheeted for the offences punishable under Sections 392, 397 & 420 of IPC, vide order dated 20.08.2000.

7. Prosecution examined as many as total 10 witnesses i.e. ASI Ishwar Singh as PW1, HC Sukhbir Singh as PW2, SI Dharam Pal as PW3, HC Umed Singh as PW4, complainant – Ravinder Kumar as PW5, Raj Singh (eye-witness) as PW6, Vijay Kumar Patwari as PW7, ASI Ram Swaroop as PW8, ASI Parvesh Kumr as PW9, and SI Ramphal (Investigating Officer of the case) as PW10.

After completion of trial, Court of Ld. Additional Sessions Judge, Sonipat, held all the accused as guilty, and sentenced them as already

detailed above in this judgment.

8. While opening the arguments, counsel for the appellants Mr. Pardeep Punia, referred the statements of complainant – Ravinder Kumar, who appeared as PW5, and eye-witness Raj Singh, who appeared as PW6. Relevant parts of the examination-in-chief of PW5 – Ravinder Kumar (complainant), says as under:-

*“On 12.09.1999 at about 9 or 10 p.m. myself and PW Raj Singh have come to Farmana for telephone. After talking on telephone at Delhi we started back to our village Bhainswal Kalan. We were on Hero Honda motor cycle which was being driven by PW Raj Singh. The registration number was applied for. Motor cycle was new. When we covered a distance of about 2-3 acres from village Farmana towards Bhainswal. In the meantime a maruti car of white colour came from the opposite side who stopped the car in front of our motor cycle. Two persons stepped down from that car one of them was tall and other was little bit short. **I have seen the accused present in the Court today but they were not those persons. Those persons snatched motor cycle at pistol point from us.** The police recorded my statement Ex.PK which is bearing my signatures. I read the statement before signing the same. Motor cycle was recovered later on from the boys of Panipat side but I do not know their addresses. (At this stage the Ld. PP states that this PW is suppressing the truth and he may be allowed to declare him hostile and cross-examine him. Heard. Allowed.)*

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xxx xx xxx xx”

Similarly, examination-in-chief of PW6 – Vijay Singh (eye-witness) says as under:-

*“On 12.09.1999 at about 9.30 p.m. I along with Ravinder PW came to village Farmana for doing telephone. We were on the motor cycle being driven by PW Ravinder. I was a pillion rider. When we started back after talking on the telephone, a maruti car met us on the way, they stopped our motor cycle and snatched the same from us. Two persons stepped out of maruti car and came to us. They were having pistol in their hand and at the point of the same they snatched the motor cycle from us. Later on that motor cycle was recovered. The police recorded my statement. **I cannot say whether accused present in the court are those persons or not because, it was a night and their faces were not visible. I cannot identify even a little bit.***

(At this stage the Ld. PP states that this PW is suppressing the truth and he may be allowed to declare him hostile and cross-examine him. Heard. Request allowed.)

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xxx xx xxx xx”

From the aforementioned statements, it is clear that case was registered at the instance of PW5 – Ravinder Kumar (complainant), who did not support the case of prosecution, and was declared hostile. Another prosecution witness i.e. PW6 – Raj Singh (eye-witness), also failed to support the version of the prosecution.

In view of above, counsel for the appellants pleads clear

acquittal of the accused, as there is no direct evidence available against them on the file, as two of the star witnesses of the prosecution side, have not even supported the case of prosecution.

9. I have considered the aforementioned submissions of the counsel for the appellants, and convinced with the facts available on record that both the star witnesses of the prosecution have failed to support their initial stand, upon which case was built up by the prosecution agency.

From the said statements, arguing counsel for the appellants also points out that as per PW5 – Ravinder Kumar, motorcycle in question was driven by Raj Singh (PW6), but according to the deposition of Raj Singh (PW6), motorcycle in question was driven by Ravinder Kumar (PW5). Thus, again a material contradiction has been pointed out by the counsel for the appellants, and there is no denial with the said fact of contradiction, which is available on record in the shape of deposition of both the witnesses.

10. Mr. Pardeep Punia, further argues that there is no admissible evidence, because after arrest of the accused by CIA Staff, disclosure statements recorded as Ex.PD of accused – Rupesh @ Banti, of accused – Krishan Kumar as Ex.PE, and also of accused – Subhash as Ex.PF, were recorded and there is no other material with the prosecution. In fact, all these statements were recorded in FIR No. 272, dated 05.10.1999, registered under Sections 379/411/201 of IPC, and Section 25 of the Arms Act, at Police Station Samalkha.

These memo of statements of the accused cannot be commented upon in the proceedings of the present case, though contents of the same are objectionable being confessional in nature during police arrest. Thus, taking custody of the accused on the basis of the memo of statements of the accused

prepared in some other case, cannot be a valid basis for affecting of their arrest. Only evidence led by the prosecution in that regard is in the shape of PW3, SI Dharam Pal Singh, which says as under:-

“On 6.10.1999 I was attached to CIA Staff Panipat. Accused Rupesh had suffered statement Ex.PD before me about various criminal acts committed by him (objected to being confession in police custody). Similarly, accused Krishan had suffered statement Ex.PE (objected to being confession in police custody) before me about various criminal act committed by me. And accused Subhash had suffered statement Ex.PF (objected to being confession in police custody).

The signature of the witnesses and those of the accused were obtained on the documents. Requisite information was flashed to PS Kharkhoda about the incident involving its jurisdiction.

xx xx by Shri I.S. Saroha and Rajiv Chaudhary, Advocate.

No recovery was effected by me of any article pertaining to the case in question.

RO & AC

Sd/- ASJ., 26.4.2000”

Similarly, custody was taken by PW1 – ASI Ishwar Singh, and his statement is reproduced hereinbelow:-

“On 10.10.1991 I was attached to PS Kharkhoda. On that day we had received a VT message at PS Kharkhoda from PS Samalkha about disclosure statements suffered by accused Krishan, Rupesh and Subhash in a case pertaining to our jurisdiction. I had gone to Panipat and obtained the custody of accused Rupesh under orders of the Area Magistrate on

10.10.1991.

xx by Shri I.S. Saroha, Advocate

Nil (Opp. Given).

RO & AC

*Sd/- ASJ, Sonapat
26.4.2000”*

Thus, counsel argues that the manner of taking the accused in custody is also based upon the inadmissible evidence, because, such a statement of the accused in another case carries no legal sanctity.

11. Mr. Pardeep Punia, counsel for the appellants further argues that the prosecution has boldly relied upon the recovery of the motorcycle. Said motorcycle is said to have been recovered from one Mahesh Kumar, to whom, it was sold out. Said Mahesh Kumar is neither in the list of accused, nor in the list of witnesses. Therefore, recovery of the motorcycle is highly doubtful that as to same was ever in possession of the person namely Mahesh Kumar or anybody else. Had motorcycle been recovered from the possession of Mahesh Kumar, he would have been prosecuted for the offence under Section 411 of IPC i.e. having possession of the stolen property. Even the prosecution did not deem it appropriate to adopt the said line of action.

After considering the said arguments, I find force in the same, because recovery of motorcycle could only be proved through the witness from whom the vehicle was recovered, and the other witness through whom said motorcycle was sold out to Mahesh Kumar i.e. M/s Batra Trading Company, who has also not been examined. Therefore, in the absence of both the material witnesses, story put-forth by the prosecution regarding the recovery of the vehicle would remain in a big doubt. Moreover, Trial Court has already recorded the findings of acquittal under Section 420 of IPC.

12. There is another aspect to notice that in the cross-examination of Investigating Officer i.e. PW10 – SI Ramphal, it has been submitted that motorcycle was not recovered from Mahesh Kumar. Said relevant part of the statement in extracted form is reproduced hereunder:-

“Accused sold the motorcycle through one Mahesh, as the motorcycle was not recovered from Mahesh, so no action was initiated against him.”

Now, it would be important to examine the recovery memo (Ex.PJ) of the motorcycle in question. Said recovery memo clearly describes that *“in the presence of the below mentioned witnesses looted motorcycle is taken in possession from Mahesh Kumr s/o Om Parkash, r/o Naharpur, in Anita Poultry Farm, Dharuhera. Its number plate HR10A-1584, and on checking engine No.99C10E11924, chassis No.99C-10F06654 is available, and same is taken in police possession through a memo. Signatures of witnesses are taken.”*

13. This way statement of the Investigating Officer is contrary to the recovery memo of the said motorcycle. This Court has also noticed that in the FIR, neither registration number of the Maruti Car is mentioned, nor of the motorcycle. Other details of the motorcycle are also missing. Rather, as per contents of the FIR, said motorcycle was purchased about 2/3 months back, and was got passed, but number was not taken (*Number Nahi Lagwaya Tha*).

14. Thus, as per the said fact available on record, case of the prosecution leans towards the doubtful story.

Even otherwise, photocopy of the RC (Ex.P1) having been issued on 29.08.1999 of motorcycle bearing registration No.HR11A-1248, is

taken on record. Occurrence in the present case took place on 12.09.1999, and registration number i.e. HR11A-1248 had been issued on 29.08.1999. Reliance is placed on the photocopy of the registration certificate i.e. Ex.P1.

15. Now, again going back to the recovery memo (Ex.PJ), where, in the original memo, HR10A-1585 appears to have been made as HR11A-1584 by making over-writing over the numerical letters. Contents of the recovery memo also says that at the time of recovery, it was bearing No. i.e. HR10A-1584. Meaning thereby, there is again a material contradiction in the details of the registration number of the said motorcycle, but in fact, details are completely missing in the initial version Ex.PA. In other words, had it been mentioned in the FIR, this question could have been solved.

16. Now, countering the arguments of learned counsel for the accused, learned State counsel submits that case of the prosecution is proved beyond doubt, as all the accused had pointed out the place of occurrence from where motorcycle was snatched. Thus, basic reliance of the prosecution is upon the disclosure statements of accused – Subhash (Ex.PH), and memo of demarcation as Ex.PH/1, disclosure statement of accused – Rupesh @ Banti as Ex.PA, and memo of demarcation of place of occurrence by him as Ex.PC. Similarly, qua accused – Krishan, disclosure statement Ex.PG, and memo of demarcation as Ex.PG/1.

Learned State counsel also argues that place of occurrence has been pointed out by the accused persons, and admission of guilt is a strong piece of evidence, and conduct of police being fair and impartial, cannot be doubted.

17. To the view point of the Court, this argument is without any force because preparing of the memo of demarcation as pointed out by the

accused, is neither believable nor of any use. Once place of incident was already within the knowledge of the police and its witnesses from the time of recording of statement of complainant – Ravinder Kumar i.e. Ex.PK, such a weak evidence cannot be made basis for holding the conviction for such a serious offence.

I have considered all the aspects of the case, submissions addressed by both the sides, and examined the documents and other relevant material on record, on being referred by the respective counsel for the parties, and has reached to the conclusion that the prosecution has failed to prove its case beyond the shadow of doubt. There is lack of material evidence and material witnesses of the case have already resiled. Thus, **appeal is allowed** by setting aside the judgment of conviction and order of sentence dated 02.08.2002, passed by Ld. Trial Court, and the appellants are acquitted of the charges.

Appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 21, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*