

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.329

CRA-S-2195-SB-2003 (O&M)

Reserved on:30.11.2022

Date of Decision:22.12.2022

Ravi Kumar and another

...Appellants

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr.Raman Garg, Advocate/Amicus Curiae
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 10.11.2003 passed by the learned Additional Sessions Judge, Panipat, whereby the appellants were convicted and sentenced in the following manner:-

Offence	Sentence
392/397/34 IPC	Rigorous imprisonment for ten years with fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two years.
342 IPC	Rigorous imprisonment for one year.
451 IPC	Rigorous imprisonment for one year with fine of Rs.2,000/- each and in default of payment of fine, to further undergo simple imprisonment for six months.
	All the sentences were ordered to run concurrently.

In short the case of the prosecution is that on 19.07.1999,

Ms. Malti Arora, the complainant, appeared before SI Ranbir Singh and made a statement that she was resident of Aggarsain Colony, Panipat and her husband was a practising Advocate at District Courts. On that day, her husband had gone to Faridabad in connection with his work. On the said day, at about 10:45 AM, when she got up after finishing her prayers, the door bell rang. Their servant Ramu son of Juma Ram went for opening the gate. After 5-7 minutes, the servant returned and informed the complainant that some persons were standing outside and they wanted to have a word with her. Accordingly, she went outside, but those persons had already crossed the gate and entered inside. One of them was having fair complexion, small and black hair, his height was 5' 6" and was having beard. He was wearing pant and shirt. The other boy was having dark complexion and his height was 5' 7". He was not having beard on his face and was thin. He was also wearing pant and shirt. The age of both the boys was about 20/21 years. She went near them and asked as to what was the matter. They informed her that they had to get the bail through the lawyer and had to pay the legal fee. On this the complainant informed them that her husband had gone out and asked them to come later at 11:30 AM. The accused/appellants enquired her about Ashwani Kumar, brother of her husband. She told them that her brother-in-law Ashwani Kumar was also at Courts. However, the accused/appellants stated that Ashwani Kumar was not available in the courts at that point of time and they had been sent to the house. She again told that in case they wanted to see Mr. A.K Arora, they should leave and come at about 11:30 AM, but both of them sat on the chair outside and the complainant came inside and started preparing the breakfast.

After some time, she went out and enquired from the accused as which case

they wanted to talk about with Mr. Arora. The accused told her that one boy was in custody and they had to talk about his bail. The complainant asked them to give money to her. On this, the accused stated that they had to bring the money after talking to one Ramesh, who lives in front of bus-stand and they had to talk to him and they had to use her phone. The complainant went inside and in the meantime, the electric supply was also restored. She came out with the cordless phone and the accused requested her to call phone No.45543 and she did not remember the correct phone number. Before the call could be connected, she gave the phone to them and they said, "Ramesh, the lawyer would return at 11:30" and after that, the complainant went inside and had taken her breakfast. Ramu offered them water and asked for tea. When the complainant was taking tea in her bedroom, both the boys entered there and one fair colour boy took out a pistol and pointed it on her head and said that A.K.Arora and Ashwani Kumar had taken a sum of Rs.35000/- from them, but did not get their father bailed out and their money should be returned immediately otherwise they would fire the shot. The complainant said that she was only having Rs.100-150/-. The accused asked her to take them to the cash box and the accused took her to the store of the house. A Godrej almirah was lying there and she applied the key to the almirah. They stated that Mr. Arora had taken a total sum of Rs.35,000/-, by charging Rs.200/- on each date. The complainant took out Rs.15,000/- and gave it to them and they got the entire goods removed from the almirah and also took out Rs.1000/1500, which were lying in the locker. They also took away a gold chain, a locket, a pair of rings, a pin, two silver sets, four pairs of ear rings, a silver ring, a precious stone and other jewellery in a polythene bag. Both the boys started

saying that in case the lawyer would return their money, they would return gold to her. They said that they were known to the advocate very well and thereafter they bolted the complainant and her servant Ramu in the store. After that, the complainant broke open the door and she and Ramu came out at about 12:30 PM. The car, in which my husband had gone, returned and the driver gave the file. The complainant informed him about everything and at about 01:00 PM, her husband returned from the court and she disclosed everything to him. Her husband made a phone call to the police station and the police reached at the spot at about 01:30 PM.

On the basis of the above statement made by complainant, the FIR under Sections 392/34 IPC was registered against two unknown persons. After conducting the necessary investigation against the present accused/appellants, the challan under Section 173 Cr.PC was presented before the learned Area Magistrate, who committed the case to the Court of learned Sessions Judge.

Finding prima facie case under Sections 392, 397 read with Section 34 IPC, Sections 342 and 450 IPC, they were charge-sheeted, to which they pleaded not guilty and claimed trial.

In support of the case of the prosecution, 15 witnesses were examined. PW-1 HC Sobh Ram was a formal witness. Rajesh Kumar, Draftsman was examined as PW-2, who prepared the scaled plan Ex.PB with correct marginal notes. PW-3 UGC Prem Singh was examined by the prosecution, in whose presence Ravi Kumar accused/appellant made a disclosure statement Ex.PC on 28.01.2001. PW-4 ASI Balbir Singh had recorded the formal FIR Ex.PD. The prosecution further examined SI Bhagat Singh as PW-5, who was posted in CIA Rewari on 24.01.2000. He

received a secret information that five young boys were standing in village Masani and they were making preparation to commit the dacoity. After preparing the raiding party, three persons were apprehended with country made pistols out of those five persons. From accused/appellant No.1-Ravi Kumar, one country made pistol of .315 bore and two live cartridges of the same bore were recovered. During the course of interrogation, accused/appellant No.1-Ravi Kumar suffered a disclosure statement that he along with accused/appellant No.2-Surender Singh had committed theft in the house of an Advocate at Panipat at the pistol point. The recovered pistol and live cartridges were taken into possession vide memo Ex.PF. The prosecution further examined PW-6 ASI Bachan Singh, who was posted in Police Station Model Town, Panipat on 28.01.2000 and accused/appellant No.1-Ravi Kumar had suffered a statement in his presence during the course of interrogation. In pursuance to his disclosure statement, he got recovered one necklace, one ear rings, from a suitcase and Ashok Arora, Advocate, who was present at the spot, identified the ornaments as his own. Still further, Ashok Arora, Advocate was examined as PW-7. He stated that on 30.01.2000, he along with Charan Dass was present near Ram Lal Chowk, Panipat and a police party was talking to him and in the meantime, a secret information was received that accused/appellant No.2-Surender Singh son of Ishwar was present nearby and on the basis of the said information, accused/appellant No.2-Surender Singh was arrested. Accused/appellant No.2-Surender Singh suffered a disclosure statement EX.PJ. He also got recovered two sets of silver, one ring silver, one gold chain along with locket, four pairs of nose pin of silver and the same were identified by Ashok Arora, Advocate. Inspector Randhir Singh was

examined as PW-8, who conducted the initial investigation and supported the case of the prosecution. Constable Ram Kumar, was examined as PW-9, who placed on record the FIR registered against accused/appellant No.1-Ravi Kumar at Police Station Dharuhera, District Rewari. He also proved on record that one country made pistol of .315 bore and two live cartridges of the same bore, which were recovered from the possession of the accused during the course of the investigation there. SI Zile Singh was examined as PW-10, who was posted as SHO on the fateful day. He moved an application before the learned Area Magistrate to take the custody of accused/appellant No.1-Ravi Kumar by moving the application EX.PO and was allowed to join the accused in the investigation of this case by the learned Illaqa Magistrate. He proved on record the disclosure statement and the recoveries made from accused/appellant No.1-Ravi Kumar. After arrest, a test identification parade was to be held and on 29.01.2000, an application Ex.PO was moved to the learned Area Magistrate and accused/appellant No.1-Ravi Kumar refused to participate in the test identification parade and his statement EX. PR was recorded in this regard. He also testified the facts with regard to the arrest and recovery from accused/appellant No.2-Surender Singh as well. He also placed on record the proceedings conducted by the police to complete the investigation. Complainant-Malti Arora was examined as PW-11, who was an eye-witness to the occurrence also. She supported the case of the prosecution in all material particulars. Surender Kumar, Assistant Ahlmad in the Court of learned CJM, Panipat was examined as PW-12, who proved on record the interim order passed by learned JMJC, Panipat. Ramu, who was also an eye witness, was examined as PW-13 and he also supported the case of the prosecution. Ms. Ritu Garg,

learned JMIC, Panipat, was examined as PW-14, before whom an application Ex.PQ was moved for holding test identification parade of accused/appellant No.1-Ravi Kumar. He recorded the statement of accused Ravi Kumar as Ex.PR, wherein the accused stated that he did not want to get his identification parade conducted by the police and she declined the application for holding the identification parade of accused Ravi Kumar. Similarly, statement of Kulwant Singh Kalsan, who was posted as SDM, Panipat was also recorded as PW-15. Even the arrangements were made for holding the test identification parade, but the accused stated that he did not want to get the test identification parade conducted.

After the closure of the prosecution evidence, the statements of the accused/appellants were recorded by the learned trial Court and they pleaded their false implication. The accused/appellant did not lead any evidence in defence and thereafter, the evidence on behalf of both the sides was ordered to be closed by the Court.

Learned counsel for the appellants has vehemently argued that the accused/appellants were not known to any of the prosecution witnesses and the prosecution had failed to prove the identity of the accused. The witnesses produced by the prosecution had identified both the appellants for the first time in the court and such identification of the accused is not a substantive piece of evidence. He also submitted that no independent witness was joined at the time of recoveries of the stolen articles.

On the other hand, learned counsel for the State has submitted that both the appellants had refused for joining the identification parade and the identification of both the accused/appellants by the prosecution witnesses in the court was valid.

I have heard the learned counsel for both the parties and with their able assistance, I have gone through the case file minutely.

The prosecution examined PW-12 Surinder Kumar, Assistant Ahlmad in the court of learned Chief Judicial Magistrate, Panipat. He stated that on 29.01.2000, an application was moved on behalf of the prosecution for holding test identification parade of appellant No.1-Ravi Kumar, who denied for the said parade and the order passed by the learned JMIC, Panipat in this regard was exhibited as Ex.PW12/A. Still further on 31.01.2000, the prosecution again moved an application for holding identification parade of Surender Singh-appellant No.2 before the court of learned JMIC, Panipat and the accused/appellant was also produced along with the application. The Magistrate enquired from the accused as to whether he wanted to participate in the test identification parade or not and on this, appellant No.2 replied that he was prepared to participate in the test identification parade. At this, the learned JMIC, Panipat had ordered that the test identification parade be conducted and SDM, Panipat was directed to arrange the test identification parade. A copy of the application moved by the prosecution was exhibited as Ex.PW12/B, and the statement made by the accused before the learned JMIC was exhibited as PW12/C. Vide letter dated 02.02.2000, SDM, Panipat informed the court of learned JMIC, Panipat that the accused was asked to participate in the test identification parade, but the accused had refused to join the proceedings and on this, the learned JMIC had passed an order Ex.PW12/E. Thus, it is apparent that the appellants could never be permitted to take advantage of the fact that no test identification parade was held in the instant case. When both the appellants had clearly refused to join the test identification parade without any lawful

justification, an adverse inference was rightly drawn by the learned trial Court against both the appellants. Consequently, there is no force in the arguments raised by the learned counsel for the appellants that they were identified by the witnesses for the first time in the court. In fact, as per Section 9 of the Evidence Act even the identification made by the witnesses in the court of law was a substantive piece of evidence and has been validly relied upon by the learned trial Court.

Still further, the learned counsel for the appellants further argued that even the recoveries had been planted on the present appellants and no independent witness was joined at the time of making the recoveries from them. In fact, appellant No.1-Ravi Kumar was arrested in a different case at Rewari and a .315 bore pistol and 02 live cartridges of the same bore were recovered from him in pursuance of the disclosure statement suffered by him at Rewari. Later on, he was again brought at Panipat and was arrested in the instant case. Recoveries of jewellery and other valuables were made from both the appellants and the stolen articles were duly identified by PW-7 A.K. Arora, Advocate. Even his wife PW-11 Ms. Malti Arora and their servant PW-13 Ramu had duly identified both the accused/appellants and the recoveries made at the instance of accused is another corroborative piece of evidence, which proved the complicity of the accused in the crime.

Still further, non-joining of independent witnesses at the time of making the recoveries of stolen articles from the appellants would have no effect as the testimonies of official witnesses were found to be credible. Thus, the findings recorded by the learned trial Court in this regard are liable to be upheld.

Considering the peculiar facts and circumstances of the case noted above, the present appeal is hereby dismissed, being devoid of any merit. Resultantly, the impugned judgment of conviction dated 10.11.2003 and order of sentence of even date passed by the learned Additional Sessions Judge, Panipat, are upheld.

Since appellant No.2-Surender Singh has expired, the appeal qua him stands abated. Appellant No.1-Ravi Kumar, is stated to be on bail, which stands cancelled. His bail bonds stand forfeited. Necessary steps be taken by the concerned Chief Judicial Magistrate to secure the custody of appellant No.1-Ravi Kumar to serve rest of the sentence imposed upon him.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

In the end, I record my appreciation for Mr. Raman B. Garg, learned Amicus Curiae, who had rendered his able assistance to this Court.

(N.S. SHEKHAWAT)
JUDGE

22.12.2022
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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO