

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-725-SB-2004
Date of Decision: January 16, 2023

Harmail Singh
Versus
State of Punjab
...Appellant
...Respondent

CORAM: HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Aniket Aggarwal, Advocate,
Amicus Curiae, for the appellant.

Mr. J.S. Arora, DAG, Punjab,
for the respondent – State.

SANJAY VASHISTH, J.

1. Appellant – Harmail Singh has filed present appeal challenging judgment of conviction and order of sentence dated 17.03.2004, passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur, in Sessions Case No. 1, dated 15.06.2003/31.01.2004, recording conviction under Section 395 IPC. Appellant was sentenced as under:-

Under Section	Sentence	Fine	In Default
395 IPC	7 years RI	Rs. 2,000/-	6 months RI

FACTS OF THE CASE:

2(a). FIR No. 63, dated 02.05.2002, under Section 392 IPC, was registered at Police Station Makhu, District Ferozepur, on the statement of complainant – Vinod Kumar Sharma (PW-1), who was posted as Sub Divisional Clerk, Harike Head Works, Irrigation Department, Punjab. It

was also his duty to disburse salary to the employees posted at Harike Head Works.

2(b). On 02.05.2002, he alongwith Junior Engineers Manjit Singh & Balwinder Singh and Telephone Attendant Devraj (PW-2), went to State Bank of India, Makhu Branch, by Car No. PAE-418, for collecting cash for distributing salary of the employees. Junior Engineer Manjit Singh was driving car. After withdrawing an amount of Rs.8,71,732/- from aforementioned bank, Rs.1,732/- was kept by Vinod Kumar Sharma in his pocket and remaining amount of Rs.8,70,000/- was put by him in a bag bearing Mark - 'S.K. Bansal'.

2(c). When complainant – Vinod Kumar Sharma alongwith his associates started back to Harike in car, on reaching near railway-crossing in School-wali road, at about 02.30pm, one white Maruti Car, bearing No. DL-4C-1658, overtook car of the complainant. Total five persons were sitting in the said car. After overtaking the car of the complainant, they immediately stopped by applying their brakes. Two persons were sitting on the front seat and three were sitting on the rear seat. Persons sitting on the rear seat alighted from the car, two were holding *Kappas* and one was holding an iron rod. One of the person who was holding *Kappa*, came towards front side of the car of the complainant and inquiry was made from Vinod Kumar Sharma, about the bag containing cash. In the meanwhile, person who was holding iron rod, broke front glass screen of the car.

2(d). Getting afraid, Junior Engineer Balwinder Singh and

Telephone Attendant Dev Raj, immediately ran away after opening doors of their car. One of the assailants, who was armed with *Kappa*, lifted the bag containing cash from the back seat of the car. On resistance shown by Vinod Kumar Sharma, assailant gave him *Kappa* blow, but Vinod Kumar Sharma saved himself by sitting down. When Vinod Kumar Sharma again tried to catch hold of the assailants, he was pushed and due to which Vinod Kumar Sharma fell down. Ultimately, all the assailants occupied their car – DL-4C-1658 and fled away from the spot with the bag containing Rs.8,70,000/-.

2(e). At about 4.00pm, police party headed by SI Yadwinder Singh, SHO, Police Station Makhu, was found present near Old Bus Stand, Makhu, where Vinod Kumar Sharma and Junior Engineer Balwinder Singh met him. Vinod Kumar Sharma gave his statement (Ex. P-1), narrating the aforesaid occurrence. This way, after giving an endorsement, FIR (Ex. P-6) was registered under Section 392 IPC and proceedings of investigation were started.

3. On 16.05.2002, Jatinder Kumar, Ward Collie (PW-6), named accused Gurnam Singh, Amrinder Singh, Jagroop Singh, Harmail Singh, Jaswinder Singh, Mohinder Singh and Gurpreet Singh. On acquiring knowledge of complicity of the accused, after getting production warrants, said accused were arrested on 16.09.2002. On the basis of disclosure statements of accused Harmail Singh, Gurpreet Singh, Amrinder Singh, Jagroop Singh and Mohinder Singh, two *Kappas*, one number plate, one bag and one iron rod were recovered and were

accordingly taken into police possession. After completion of investigation, final report under Section 173 Cr.P.C. was submitted and all the accused were charged for the offence punishable under Section 395 IPC.

4. After examining statements of the witnesses, learned Trial Court found that prosecution has failed to prove guilt of accused (1) Amrinder Singh, (2) Jagroop Singh, (3) Mohinder Singh, (4) Gurnam Singh and (5) Jaswinder Singh, beyond reasonable doubt. However, appellant – Harmail Singh and co-accused Gurpreet Singh were held guilty for the offence punishable under Section 395 IPC and were accordingly sentenced, vide order dated 17.03.2004.

5. In regard to the co-convict Gurpreet Singh, this Court is informed that his appeal, bearing CRA-S-934-SB-2004, was disposed of by this court being rendered infructuous, vide order dated 28.04.2016, as he had completed his sentence period. Order dated 28.04.2016, says as under:-

“ Learned counsel for the appellant has contended that this appeal has been rendered infructuous since the appellant has already undergone the entire sentence awarded to him in this case and the same may be disposed of accordingly.

As per the custody certificate filed on the last date of hearing, appellant Gurpreet Singh has undergone the total actual period of sentence of three years, one month and nine days in this case. There is a note in the said custody certificate that the sentence of the convict was completed on 20.6.2006 after giving the benefit of Govt. Remission & Jail remission of 3 years, 10 months and 21 days and detained in lieu of fine. He was subsequently released on 13.7.2006 upon deposit of fine at jail gate.

Vide the impugned judgment, he was held guilty for the offence punishable under Section 395 of the

IPC and awarded with the sentence of rigorous imprisonment of seven years along with fine of `2,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

In the light of above, this appeal stands dismissed being not pressed as having been rendered infructuous and disposed of accordingly.

Copy of this order be sent to the quarter concerned for its strict compliance.”

SUBMISSIONS ON BEHALF OF THE APPELLANT – HARMAIL SINGH:

No Test Identification Parade:

6. While opening the arguments, learned *Amicus Curiae*, appearing for the appellant, submits that prosecution has failed to connect the appellant with the incident. During course of investigation, no test identification parade was conducted. This fact is evident from the statement of Vinod Kumar Sharma (PW-1), who has specifically admitted that no identification parade of any of the accused was held by the police. It is also admitted by him that after occurrence first time he has seen the accused in the Court, except accused Jaswinder Singh. It was only on 16.05.2002, on the statement of Jatinder Kumar, Ward Collie (PW-6), seven named accused were arrested, but the said prosecution witness, i.e. Jatinder Kumar (PW-6), turned hostile and has not supported case of the prosecution.

In support of his submissions, learned counsel for the appellant has placed reliance upon a judgment of Hon’ble Apex Court in the case of Kanan and others v. State of Kerala, AIR 1979 SC 1127 : 1979 (3) SCC 319.

Uncertain Identification of the appellant:

7. While arguing on the issue of uncertain identification of the appellant, learned counsel also refers to the statement of Devraj (PW-2), who had identified only one accused, namely, Jaswinder Singh, who has already been acquitted by learned Trial Court. Thus, there is no sound evidence with the prosecution to fix identity of the appellant, to hold that present appellant is, in fact, the one who was really involved in the alleged incident.

Non-recovery of money allegedly looted in the incident:

8. Learned *Amicus Curiae* submits that another issue involved in the present case is non-recovery of looted money. Occurrence allegedly took place on 02.05.2002 and accused were arrested on 16.05.2002. Subject matter of the case for which dacoity was committed, was an amount of Rs. 8,70,000/-. Said amount has not been recovered by prosecution during the course of investigation. Learned counsel for the appellant argues that non-recovery of looted amount completely belies the story framed by the prosecution.

Contradictions in the prosecution case

9. Learned *Amicus Curiae* has also pointed out contradictions in the statements of prosecution witnesses, namely, complainant – Vinod Kumar Sharma (PW-1), Devraj (PW-2) and SI/SHO Yadwinder Singh (P-5).

SUBMISSIONS BY LEARNED STATE COUNSEL:

10. Learned State counsel argues that there is ample evidence

available in the present case, which is sufficient to prove guilt of the accused/appellant. Learned State counsel submits that depositions of complainant – Vinod Kumar Sharma (PW-1) and Devraj (PW-2) are worth accepting to believe involvement of both convicts, i.e. appellant – Harmail Singh and co-convict Gurpreet Singh. Learned State counsel also argues that there was no reason or motive with the police to involve the appellant in a false case. Rather, the bag having print of ‘S.K. Bansal’ has also been recovered. Recovery of said bag is prime evidence with the prosecution to connect the accused with the incident. Learned State counsel also argues that recovered weapons of offence, i.e. two *Kappas* and one iron-rod, besides one number plate and bag, is sufficient evidence which establishes the case as a truthful version. Learned State counsel also states that accused are also involved in many other cases, thus, chances of their involvement in the present occurrence, cannot be ruled out.

11. I have heard arguments advanced by learned counsel for the parties and with their able assistance gone through the material available on record.

ANALYSIS OF EVIDENCE AND FINDINGS:**Re: Test Identification Parade:**

12. Perusal of FIR version (Ex. P-6) reveals that neither names of any of the accused is mentioned nor any detail of their physical appearances and other descriptions are given by complainant Vinod Kumar Sharma. Subsequently, no test identification parade was ever

conducted by the police during investigation. It was only on 16.05.2002, when on the statement of Jatinder Kumar, Ward Collie (PW-6), seven named accused were arrested, but the said prosecution witness, i.e. Jatinder Kumar (PW-6), turned hostile and has not supported case of the prosecution. He has specifically deposed that *“About 2 years ago I was posted as Ward coolie at Harike. I had not seen any occurrence. No body met me and nothing was dis-closed to me. I do not know anything about the occurrence.”*

Furthermore, complainant - Vinod Kumar Sharma (PW-1), in his deposition has specifically admitted that no identification parade of any of the accused was held by the police. It is also admitted by him that after occurrence, first time he has seen the accused in the Court, except accused Jaswinder Singh. In relation to not conducting of test identification parade, Hon'ble Apex Court in the case of **Kanan and others (supra)** has made the following observations:-

“.....Both the Trial Court and the High Court have found that the mere fact that no T.I. parade was held would not destroy the evidence of PW25. With due respect, we feel that the High Court erred in law in taking this view. It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observations. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. In these circumstances therefore, we feel that it was incumbent on the prosecution in this case to have arranged T.I. parade and get the identification made before the witness was called upon to identify the appellant in the

court. On this ground alone the testimony of PW25 becomes unworthy of credence and must be excluded from consideration.”

13. When ratio of said judgment is applied to the set of evidence available in the present case, this Court feels that the prosecution has caused dent in its own case by not conducting any test identification parade. As already noticed, in the statement of complainant Vinod Kumar Sharma (PW-1), it has been admitted in specific that there was no test identification parade conducted during course of investigation by the police and witness was identifying the accused for the first time in the Court.

Dent goes deeper when Devraj (PW-2) turns hostile on the issue of identification. Except of identifying one accused Jaswinder Singh, who already stands acquitted by the Trial Court, none else is identified by him. This witness has specifically deposed that “.....*I can identify only one accused out of the accused present in court today. (The witness has identified accused Jaswinder Singh the person who was seen by him holding the rod.) I cannot identify any other accused present in court today.”*

There is no sound evidence with the prosecution to fix identity of the appellant, to hold that present appellant is, in fact, the one who was really involved in the alleged incident.

14. On reading of evidence of complainant Vinod Kumar Sharma (PW-1), it is also clear that according to him duration of incident was of about one minute and identifying the accused (appellant) after a

gap of about one year and eight months, that too for the first time in the witness box, is also surprising. Broadly speaking, except of identification done by complainant Vinod Kumar Sharma (PW-1), first time in the Court, there is no other evidence with the prosecution to connect the appellant with the alleged incident. Thus, there is no sound evidence on record to establish the clear identity of appellant – Harmail Singh.

Re: Non-recovery of looted money:

15. Another argument advanced by learned *Amicus Curiae* is with regard to the non-recovery of looted money. As per prosecution version, an amount of Rs.8,70,000/-, which was kept in the bag having Mark 'S.K. Bansal', was looted by the assailants/accused persons on 02.05.2002. Despite arrest of accused on 16.05.2002, and recovery of bag vide recovery memo., dated 08.09.2002 (Ex. P-23), prosecution has miserably failed to recover said amount during course of investigation. Thus, non-recovery of looted amount completely belies the story framed by the prosecution. To my mind, once, weapons allegedly used in the incident, i.e. *Kappas* and iron rod, are shown to be recovered by the police after disclosure statements by the accused, there cannot be any reason that the same accused would not disclose about the money. Therefore, in the absence of recovery of looted amount, involvement of appellant is highly doubtful.

16. In fact, without there being any recovery of money or any explanation found during investigation that where that amount was used

by the accused within a period of two weeks of the occurrence, would be considered as gap in the story of the prosecution and, thus, non-recovery of looted amount has delinked the story of the prosecution.

Re: Contradictions in the prosecution case:

17. Learned *Amicus Curiae* has pointed out contradictions in the statements of prosecution witnesses. As per the testimony of SI/SHO Yadwinder Singh (PW-5), complainant Vinod Kumar Sharma (PW-1) and Junior Engineer Balwinder Singh were on foot when they met him at Makhu Chowk, where he was present with police party, and Junior Engineer Manjit Singh and Devraj (PW-2) were present on the spot at the time of his reaching there alongwith complainant Vinod Kumar Sharma.

Whereas, complainant Vinod Kumar Sharma (PW-1) deposes that Junior Engineer Balwinder Singh and Devraj (PW-2) were sitting on the back seat of the car and on getting afraid both of them ran away from the spot and this witness (PW-1) further deposes that he alongwith Junior Engineer Manjit Singh reached Makhu Chowk and met the SHO, where Junior Engineer Balwinder Singh and Devraj (PW-2) were already present. Thus, it is not clear whether Vinod Kumar Sharma went alone or was in the company of Balwinder Singh to submit complaint to the police party.

In regard to the presence, even deposition of Devraj (PW-2) is that complainant Vinod Kumar Sharma (PW-1) and Junior Engineer Balwinder Singh were present with police when he (Devraj) and Manjit Singh went there on foot.

18. To confirm the alleged contradictions, as argued by learned *Amicus Curiae*, I have found that in the statements of all the three witnesses, said contradictions are available on record. Now question arises whether such contradictions are material and have any bearing on just decision of the present case?

19. Here in the case in hand, firstly there is no recovery of looted amount, secondly one of the official who is witness of arrest of the accused after two weeks of the incident, has not supported the case of prosecution. Thirdly, there is no test identification parade for establishing involvement of the accused in the alleged incident. Therefore, in my considered view, contradictions in the deposition of prosecution witnesses, as pointed out by learned *Amicus Curiae* and noticed here-in-above, are material and, in fact, have weakened the case of the prosecution.

20. Otherwise also, recovery memo. dated 08.09.2002 (Ex. P-23) regarding recovery of bag, is also perused by this Court. Said bag has been recovered from accused Jagroop Singh, who has already been acquitted by the Trial Court. Thus, recovery of bag could be a connecting evidence by proving the fact that recovered bag is the same in which looted amount of Rs.8,70,000/- was kept by complainant Vinod Kumar Sharma and said bag was lying on the rear seat of the car. Undoubtedly, it is not the case of the prosecution that bag has been recovered from the present appellant. Thus, neither bag nor any amount has been recovered from the appellant by the prosecution during

investigation. This Court cannot ignore the acquittal of five of the accused on the same set of evidence.

CONCLUSION:

21. In view of the submissions and reasons recorded here-in-above, coupled with the reliance placed upon the judgment of Hon'ble Apex Court in the case of **Kanan and others (supra)** on the issue of test identification parade, this Court finds that prosecution has not brought ample evidence on record to connect the appellant with the alleged incident. Consequently, **present appeal is allowed**. Impugned judgment of conviction and order of sentence, dated 17.03.2004, passed by learned Trial Court is **set aside**. Appellant – Harmail Singh is acquitted and discharged from the charges levelled against him.

22. Pending miscellaneous application(s), if any, are also disposed of accordingly.

23. Registry is directed to send back original lower court record alongwith a copy of this judgment.

(SANJAY VASHISTH)
JUDGE

January 16, 2023

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