

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-366-SB-2013
Date of Decision : 17.02.2023**

Manoj Rana and another

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Shweta Sanghi, Advocate
for the appellants.

Ms. Kirti Singh, Deputy Advocate General, Haryana
for the respondent-State.

VIKRAM AGGARWAL, J

1. The instant appeal is directed against the judgment of conviction dated 04.10.2012, passed by the learned Addl. Sessions Judge, Bhiwani vide which the appellants were convicted under Sections 328 and 379 IPC. Vide order of sentence dated 08.10.2012, the appellants were sentenced to undergo rigorous imprisonment for a period of 05 years alongwith fine of Rs.2,000/- each and in default of payment thereof to further undergo simple imprisonment for a period of 01 month each under Section 328 IPC. They were also sentenced to undergo rigorous imprisonment for a period of 02 years alongwith fine of Rs.1,000/- each and in default thereof to further undergo simple imprisonment for a period of 15 days each under Section 379 IPC.

2. On 07.02.2011, two persons were found lying unconscious in

Gorakh Dham Express when the train was standing at Rohtak Railway Station. They were taken to General Hospital, Bahadurgarh wherein the statement of one of them namely Raj Bahadur Singh was recorded. He stated that on 06.02.2011, he alongwith one Anil had boarded the train from Bhiwani. Two boys came and sat on the upper berth and started talking to them in a friendly manner. They disclosed their names as Manoj Rana and Monu. While talking to them, they took out some toffees from the pocket and offered the same to him and Anil. They consumed the toffees and became unconscious and on regaining consciousness, they found themselves in General Hospital, Bahadurgarh. They found that the said two persons had taken away their cash, identity card, ticket, suitcase, mobile phone etc. FIR was registered and investigation commenced. Appellant Manoj Rana was arrested on 08.02.2011 whereas appellant Umesh was arrested on 08.04.2011. Both suffered disclosure statements confessing that they had committed the offence. Certain toffees and intoxicating tablets namely Ativan (Lorazepam) were recovered from Manoj Rana.

3. On completion of investigation, trial commenced.
4. The prosecution examined 14 witnesses and also tendered into evidence a large number of documents. No evidence was led in defence.
5. After conclusion of the trial, the appellants were convicted and sentenced in the manner referred to in the opening paragraph of the judgment.
6. Aggrieved by the decision of the trial Court, the present appeal has been preferred.
7. I have heard learned counsel for the parties and with their assistance, have perused the record of the trial Court.

8. Ms. Shweta Sanghi, learned counsel representing the appellants has vehemently contended that the appellants were falsely implicated. It has been argued that complainant Raj Bahadur had not supported the case of the prosecution and even then the learned trial Court wrongly relied upon his statement. Learned counsel has submitted that as per the prosecution, the appellants had offered toffees to all those people sitting near them in the train and if this was the case then it was most improbable that only Raj Bahadur and Anil would become unconscious. Learned counsel has further submitted that no recovery had been effected from appellant Umesh. It has also been argued that the other victim Anil Kumar was not examined by the prosecution and sole statement of Raj Bahadur is not sufficient especially when he had not supported the case of the prosecution.

9. Learned counsel has further argued that it does not stand proved that the appellants had given toffees to Raj Bahadur and Anil and that even if the alleged recovery of toffees and Ativan tablets etc. is taken to be correct, their mere possession is no offence because possession of toffees and tablets which are available over the counter is not illegal. Learned counsel has referred to the statements of the prosecution witnesses and has pointed out certain inconsistencies in the statements of the witnesses. She has argued that there is no link evidence and, therefore, the appellants deserve to be acquitted. Learned counsel has also submitted that no test identification parade was conducted and, therefore, it cannot be said that it was the appellants who had committed the crime. Learned counsel has also contended that the appellants have almost undergone their entire sentence; they have suffered a protracted trial as the incident is of the year 2011; the judgment under challenge was passed in the year 2012 and even 12 years

after the alleged commission of the offence, the matter has not come to an end.

10. On the other hand, Ms. Kirti Singh, Deputy Advocate General, Haryana, representing the respondent-State of Haryana has stated that the prosecution successfully established the guilt of the accused-appellants and, therefore, the learned trial Court rightly convicted them. She has strenuously urged that such incidents are on the rise and they need to be dealt with sternly so that they may be an eye-opener for such offenders.

11. I have considered the arguments addressed by learned counsel.

12. Such incidents are on the rise. Journeys have become unsafe. People who commit such offences do not realize that they are playing with the lives of the victims. It is a known fact that an overdose of sedatives can kill a person. There have been instances where people have lost their lives in such incidents. Such offences need to be dealt with sternly, though any offence howsoever small is required to be dealt with sternly. In the present case, the FIR was registered on the basis of the statement given by Raj Bahadur, who is one of the victims. He stepped into the witness box as PW3. He duly deposed about the incident and also identified both appellants in the Court. He stated that he was not accompanied by anyone and on account of this he was declared hostile on the request of Public Prosecutor. He was then cross-examined by the Public Prosecutor and in the cross-examination, he admitted his signatures on his statement Ex.P2. He admitted that the police had recorded his statement. He only denied about his being with Anil in the train. He duly deposed about important facts but denied certain facts also. He admitted his signatures on all the documents. This Court has no hesitation in relying upon on certain parts of

the statement. It is not essential that the entire statement has to be discarded and that if a person is lying on one aspect, he cannot be believed on the other aspect. It has to be borne in mind that the maxim of “Falsus in Uno Falsus in Omnibus” is not applicable in this part of the world and, therefore, certain parts of the statement of Raj Bahadur can safely be relied upon while discarding the other parts.

13. Apart from Raj Bahadur who appeared as PW3, the prosecution examined many other official witnesses including the police officials who had found Raj Bahadur and Anil lying unconscious in the train and PW7 Sub Inspector Subh Ram who had arrested appellant Umesh on 08.04.2011 and had recorded his disclosure statement Ex.P8 on the identification of Raj Bahadur. PW8 Sub Inspector Sahib Singh had arrested appellant Manoj Rana on the identification of both Raj Bahadur and Anil. On his personal search, four tablets of Ativan 2mg, two toffees (eclair) and one Rosgulla were recovered from him. He suffered a disclosure statement Ex.P11 and further recoveries were also made from his room. The argument of learned counsel for the appellants that Anil Kumar was not examined is also devoid of merit as Anil Kumar had duly appeared in the witness box as PW13. No doubt, he gave contradictory statements in the cross-examination but the fact remains that he stepped into the witness box. He deposed about the incident and identified the appellants in the Court. However, he stated that he was alone on that day which would not affect the case of the prosecution. The FSL report was also produced in evidence as Ex.P30 as per which, the drug Lorazepam was found in the toffees recovered from appellant Manoj Rana and the same drug was found in the blood samples of both Raj Bahadur and Anil. It, therefore, means that the toffees were being laced

with the tranquilizers and were being given to innocent travellers who used to consume them unsuspectingly only to fall unconscious and to be robbed of their belongings.

14. The argument that no test identification parade was conducted and, therefore, the guilt of the appellants does not stand proved is also devoid of merit. Both the appellants-accused were arrested on the identification of PW3 Raj Bahadur and PW13 Anil Kumar and both these persons identified the appellants in the Court also.

15. Even otherwise, the non-conducting of a test identification parade is at best, a result of defective investigation, for which, no benefit can be given to the accused. It was held by the Hon'ble Supreme Court of India in **Yogesh Singh Vs. Mahabeer Singh and others, 2016(4) RCR (Criminal) 753 (S.C.)** that defective investigation by itself cannot be a ground for acquittal. It was held that in such cases, there is a legal obligation on the part of the Court to examine the prosecution evidence de-horse such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Reliance may also be placed on the case reported as **Karan Singh Versus State of Haryana, 2013 (4) RCR (Crl.) 205**, wherein it was held by the Hon'ble Supreme Court of India that unless lapses made on the part of investigating authorities are such, so as to cast a responsible doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the court would not set aside the conviction of the accused merely on the ground of tainted investigation. In **Gajoo Vs. State of Uttarakhand, 2013 (1) Criminal Court Cases 393**, it has been held by the Hon'ble Supreme Court of India that a defective investigation, unless

affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. In **Abu Thakir and others Vs. State rep. by Inspector of Police, Tamil Nadu, 2010 (2) Criminal Court Cases 334**, the Hon'ble Supreme Court of India held that even if the investigation is illegal or even suspicious, the rest of the evidence must be scrutinized independently of the impact of it. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. If the Court is convinced with the testimony of a witness to the occurrence to be true, the Court is free to act on it albeit the investigating officer's suspicious role in the case.

16. It is also settled law that the failure to hold a test identification parade would not make the identification of the accused in Court inadmissible. It is also settled law that merely because no test identification parade has been conducted, it cannot be a ground for throwing out the evidence of identification of an accused in Court when evidence of the witness on the question of identity of the accused is found to be credible.

17. Further, minor inconsistencies/contradictions in the statements of the witnesses as pointed out are of no consequence. In the case of **Yogesh Singh Vs. Mahabeer Singh and others, 2016(4) RCR (Criminal) 753 (S.C.)**, the Hon'ble Supreme Court of India laid down that minor discrepancies in the evidence should not be given undue emphasis and that the evidence is to be considered from the point of view of trustworthiness.

It was laid down by the Hon'ble Supreme Court of India as under:-

“29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the

prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi @ Rameshwar v. State of M.P.*, 1999(4) R.C.R.(Criminal) 246 : (1999) 8 SCC 649; *Leela Ram (dead) through Duli Chand v. State of Haryana and Another*, 1999(4) R.C.R.(Criminal) 588 : (1999) 9 SCC 525; *Bihari Nath Goswami v. Shiv Kumar Singh & Ors.*, (2004) 9 SCC 186; *Vijay @ Chinee v. State of Madhya Pradesh*, 2010(3) R.C.R.(Criminal) 794 : 2010(4) Recent Apex Judgments (R.A.J.) 330 : (2010) 8 SCC 191; *Sampath Kumar v. Inspector of Police, Krishnagiri*, 2012(2) R.C.R.(Criminal) 231 : 2012(1) Recent Apex Judgments (R.A.J.) 452 : (2012) 4 SCC 124; *Shyamal Ghosh v. State of West Bengal*, 2013(1) R.C.R.(Criminal) 770 : 2013(1) Recent Apex Judgments (R.A.J.) 202 : (2012) 7 SCC 646 and *Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr.*, 2014(1) R.C.R.(Criminal) 1 : 2013(6) Recent Apex Judgments (R.A.J.) 528 : (2013) 12 SCC 796).

30 to 43. *****

44. In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence which would tilt the balance in favour of the respondents. The minor improvements, embellishments etc., apart from being far yield of human faculties are insignificant and ought to be ignored since the evidence of the witnesses otherwise overwhelmingly corroborate each other in material particulars.”

18. In view of the afore-mentioned facts and circumstances, this Court is of the considered opinion that the prosecution proved its case against the appellants beyond reasonable doubt and the learned trial Court rightly convicted them. No fault can be found with either the judgment of conviction or the order of sentence. However, the custody certificates filed in the Court reveal that appellant No.1 Manoj Rana has undergone actual

sentence of 03 years, 09 months, 25 days and total sentence of 04 years, 11 months, 07 days which includes remission of 01 year, 01 month, 12 days. Similarly, in the case of appellant Umesh, actual sentence is 03 years, 07 months, 28 days and total sentence is 04 years, 10 months, 05 days which includes remission of 01 year, 02 months, 07 days. It is, therefore, clear that both appellants have undergone almost the entire sentence. Even otherwise, the incident is of the year 2011. The judgment under challenge is of the year 2012 and the appeal is of the year 2013. Their appeal has been pending in this Court for almost 10 years. The appellants are first offenders and are not stated to have committed any offence after the commission of the offences in question. They have suffered a protracted trial as their matter has not been finalized for a number of years. This Court, therefore, deems it appropriate to modify the sentence of imprisonment to that already undergone by the appellants till now. However, there would be no modification in the sentence of fine and the same is affirmed. The fine would be payable/recoverable from the appellants as per law. A copy of this judgment be sent to the concerned trial Court as also the Chief Judicial Magistrate, Bhiwani for necessary action.

19. With the aforesaid modifications, the appeal is disposed of.

(VIKRAM AGGARWAL)
JUDGE

17.02.2023

mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No