

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101-1

Reserved on: 14.11.2024
Pronounced on: 28.11.2024

1.

CRA-S-545-SB-2003
- Kuldeep

...Appellant
- Versus
- State of Haryana

...Respondent
2.

CRA-S-1717-SB-2003
- Satbir

...Appellant
- Versus
- State of Haryana

...Respondent
3.

CRA-S-2291-SB-2004
- Bablu

...Appellant
- Versus
- State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishal Sharda, Amicus Curiae
appearing on behalf of the appellants.
(in CRA-S-545-SB-2003 and CRA-S-2291-SB-2004)

Mr. Randhir Singh, Advocate for
Mr. R.P. Dhir, Advocate
for the appellant(CRA-S-1717-SB-2003).

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1.

This common judgment shall dispose of the above-mentioned appeals as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from CRA-S-545-SB-2003.
2.

This instant appeal has been preferred against the judgment of conviction and order of sentence dated 06.01.2003 and 08.01.2003

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respectively, passed by learned Additional Sessions Judge (*Ad-hoc*), Hisar in the case stemming from FIR, bearing No.153 dated 23.06.2001 registered under Sections 392, 397, 341, 506 of IPC and Section 25 of the Arms Act, 1959, at Police Station Sadar, Hansi, Hisar. All the appellants were sentenced in the following terms:-

Under Section	Sentence
Section 392 read with Section 397 of IPC	<i>R.I. for 7 years.</i>
Section 341 of IPC	<i>R.I. for 15 days.</i>

It was ordered that both sentences shall run concurrently.

FACTUAL MATRIX

3. Succinctly, the facts as per the prosecution case are that the complainant-Parveen Kumar met the police on 23.06.2001 and lodged a complaint to the effect that when he along with his wife were returning home on the evening of 22.06.2001 on their scooter, two young boys attempted to rob them. They were armed with a ‘*Chhura*’ and were on a bike bearing registration No.HR31A0250, which they abandoned after their armed robbery was foiled. Upon the registration of the FIR (*supra*), the Investigating Officer went to the spot of the alleged occurrence and took the abandoned motorbike into possession in the presence of the complainant and one Chaman Lal. Subsequently, during the course of the investigation, it came to light that another person namely Raj Kumar (PW-9) was robbed by a few persons on 22.06.2001. The offenders snatched Rs.800/-, two pairs of shoes and a ‘*fauji*’ colour bag containing a receipt of Rs.22,000/- from Raj Kumar. Appellants-



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accused Kuldeep and Bablu were arrested on 28.06.2000 and upon interrogation, made their respective disclosure statements. They also pointed out the place of the alleged occurrence. One pair of shoes was recovered from Kuldeep while another pair of shoes along with a plastic bag, photocopy of the receipt and a '*chhura*' were recovered from Bablu. On 29.06.2001, the appellant-accused Satbir was arrested from whom a '*fauji*' colour bag was recovered.

4. The learned trial Court upon finding a *prima-facie* case, framed charges against the appellants for commission of offences punishable under Sections 392, 397, 341, 506 of IPC and Section 25 of Arms Act, 1959, to which they pleaded not guilty and claimed trial.

5. On assessing the evidence available on record, the learned trial Court vide judgment dated 06.01.2003, convicted and vide order dated 08.01.2003 sentenced the appellants-accused under Section 392 read with Sections 397 and 341 of IPC. Aggrieved by the same, the appellants have approached this Court by way of the present appeal.

CONTENTIONS

6. Learned counsel for the appellants-accused *inter alia* contend that the learned trial Court was wrong in rejecting the defence plea of the appellants. The learned trial Court convicted the appellants on the basis of inadmissible evidence as per Section 27 of the Indian Evidence Act, 1872 i.e. their confession-cum-disclosure statements. Further, the alleged incident concerning Parveen Kumar had taken place at about 8:00 pm on 22.06.2001, however, the matter was reported to the police on the next day. As such, there

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was an inordinate and unexplained delay of one day which renders the prosecution case suspicious. All the articles which were allegedly recovered from the appellants belonged to Raj Kumar, yet the learned Court, while framing charges against the appellants, held these articles to be belonging to the complainant-Parveen Kumar. After rectifying this error and amending the charge, the learned trial Court ought to have tried the case *de novo*. Hence, the appellants deserve to be acquitted on this ground alone. Moreover, in spite of the fact that the complainant only mentioned two persons as being involved in the alleged attempted robbery, the learned trial Court chose to summon three persons and later on convicted them, without properly establishing their identity in the first place. Lastly, even if all the allegations advanced by the prosecution are taken at face value even then the appellants could at the most be convicted for being in possession of stolen property as stipulated under Section 411 of IPC.

7. Learned State counsel contends that there is ample evidence on record to prove that the appellants attempted to rob Parveen Kumar at knifepoint and successfully managed to rob several articles belonging to Raj Kumar. As such, the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and therefore, no interference is warranted by this Court.

OBSERVATIONS AND ANALYSIS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance. At the very outset it is pertinent to mention that Raj Kumar (PW-9), whose belongings were taken by the appellants, never



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approached the police to file a complaint. He was joined in the investigation later on. However, no material is available on record to substantiate the matter or timing by which the police became aware of the alleged robbery committed against Raj Kumar. The deposition of Raj Kumar (PW-9) reads as follows:

“It was 22.6 or 23.6.2001 that I was going on motorcycle to Barwala to Sisai via Data and Musudpur at about 9 P.M. As soon as I reached the turning near Data Gau Shala toward Sisai which is very beat turing, a motorcycle came from the side of Kikar trees, perhaps there was one person on that motorcycle. He showed me a sword (Talwar) in the light of the motorcycle and brought his motorcycle in front of my motorcycle. My motorcycle stopped. He was having an angosha with him. He put the Angosa on my face and the sword was put on my shoulder. Some persons came from under the kikar trees and they took everything from my pockets. I was having cash of Rs. 300 to 400 Biria and Match box and the bag in my knees, the bag was containing some ladus etc. Some papers were there in the bag the photostat copy of rasid Ex. P-5 is the same. The bag Ex. P-6 of Fauji colour is the same bag taken away from me. I cannot identify any of the accused person because the whole of the occurrence took place in few seconds. I did not report the police but the police recorded my statement.”

A perusal of the testimony shows that there is no mention of the two pairs of shoes which were allegedly robbed and later recovered from the appellants Kuldeep and Bablu. Additionally, while the prosecution case specifies that cash to the tune of Rs. 800 was taken by the appellants, the victim Raj Kumar has clearly stated the cash amount to be Rs. 300 to 400. Resultantly, such glaring inconsistencies strike at the root of the matter and stifles the case set up by the prosecution completely.

9. As per the initial complaint moved by Parveen Kumar and the testimony of Raj Kumar, both the occurrences took place after dark. In such a scenario it becomes crucial for the investigation agency to conduct a test



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identification parade to satisfactorily establish the identity of the appellants-accused. Test identification parade becomes even more crucial in the instant case as the only description offered by complainant Parveen Kumar was that the person riding the bike was wearing a shirt and a pair of pants and the person riding pillion was sporting a green-coloured t-shirt. Both the persons were clean shaven and the person riding pillion was of a darker complexion.

10. Section 54A of the Cr.P.C. reads as follows:

“54A. Identification of person arrested.--

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed.”

While conducting Test Identification Parade is not mandatory, this is not a case where identity of the appellants could have been conclusively established simply on the basis of a vague description offered by the complainant. Moreover, no witness from the vicinity or from within the ‘Gaushala’, where the complainant sought refuge, were examined in order to identify the appellants or establish their presence on the alleged spot at the time



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of two separate incidents. As such, the identities of the appellants are not conclusively proved.

11. The other circumstance that the learned trial Court relied on for resting the order of conviction is with regard to the recovery of several robbed articles. However, with respect to appellant-Bablu, the recovery of the alleged stolen shoes was effected from a '*kachakotha*.' The Investigating Officer in his deposition as PW-6 stated that the said structure is made of mud and is located to the north of Bus Stand Singwa, Barwala Road. He also admitted that the ownership of the same remains ambiguous. As such, it can be reasonably assumed that the said *kachakotha* was open to public. As far as the shoes recovered from appellant-Kuldeep are concerned, no description of the same was ever put forth by the victim-Raj Kumar. Therefore, it cannot be said that the pair of shoes recovered were those that were allegedly stolen from the victim. As mentioned above, the victim had not even complained that two pairs of his shoes were stolen. A *fauji* bag, alleged to have been stolen by appellant-Satbir, was allegedly recovered from a shop in village Masudpur. It appears that none of the recoveries were made from a location that would directly implicate the appellants. Since the recoveries cannot convincingly be connected to the appellants, the culpability of the appellants cannot be established beyond reasonable doubt.

12. Moreover, as per the complainant, the appellants-accused abandoned their motorbike and fled from the spot under the cover of darkness. The first as well as the second owners of the bike in question were examined as prosecution witnesses. Notwithstanding their examination, there is no

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explanation forthcoming as to how the appellants-accused came in possession of the said bike and in case, it was stolen why the matter was not reported before the police.

13. In view of the above discussion, this Court finds that learned counsel for the appellants have been successful in establishing the case of the appellants. Hence, the present appeals are allowed and the impugned judgment of conviction and order of sentence dated 06.01.2003 and 08.01.2003 respectively, passed by learned Additional Sessions Judge, Hisar, are hereby set aside.

14. The appellants are hereby acquitted of the charges framed against them in the present case and their bail bonds and surety bonds also stand discharged.

15. High Court Legal Services Committee is directed to pay the remuneration to the *Amicus Curiae* as per rules.

16. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

Reserved on : 14.11.2024
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(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>