

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

103

CRA-S-1778-SB-2004 (O&M)
Date of decision: 19.02.2024

Gobind @ Gobinda and others ...Appellants

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rahul Vats, Advocate for the appellants.

Mr. Jagdish Manchanda, Addl. AG, Haryana.

AMAN CHAUDHARY. J.

1. Challenge in the present appeal is to the judgment/order dated 10/12.08.2004, passed by the learned Additional Sessions Judge (Fast Track Court), Bhiwani, whereby the appellants were convicted and sentenced as under:

Offence u/s	Imprisonment	Fine	Default sentence
451 read with 34 IPC	RI for two years	Rs.500	SI for two months
458 read with 34 IPC	RI for ten years	Rs.1000	SI for four months
392 read with 397 IPC	RI for ten years	Rs.1000	SI for four months

All the sentences were ordered to run concurrently.

2. Succinctly, the facts of the case are that on 31.5.1997, complainant, Sandeep Kumar made a statement before the police that he was running a factory under the name and style of Kiran Synthetic Industries in plot No.40, Sector 21,

Industrial Area, Bhiwani. At about 12.30 P.M, when he was present in the factory premise a person from Pawan Hospital had come to him to receive payment. While he had handed over Rs.3700/- to the said person, three people came there, one of them snatched the money from Pawan at the point of knife, whereas the other stole one gold chain, one gold ring, one wrist watch and Rs.2000/- from the almirah. When he raised a noise, Bhagat Singh and Mohammad Nizamudin came at the spot, upon which the accused caused injuries to them by throwing bricks and fled the spot. The injured were taken to the hospital. On the basis of ruqa, an FIR was registered and the accused were arrested.

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against the accused- appellants. On finding a prima facie case, charges under Sections 458/451/392/397 IPC were framed against them, to which they pleaded not guilty and claimed trial.

4. To bring home guilt of the accused, the prosecution examined PW1 Sandeep Kumar-complainant, PW2 ASI Raghbir Singh, PW3 Nizamudin, PW4 SI Anguri Lal, PW5 Dr.JB Gupta, who conducted medico legal examination of injured Nizamudin, PW6 ASI Har Bhagwan, PW7 Pehlad Singh, Retired Inspector, PW8 SI Om Parkash, PW9 ASI Randhir Singh, PW10 Inspector Ran Singh, PW11 SI Hari Singh, PW12 Inspector Ram Bilas, PW13 Charanjeet Retired SI, PW14 Constable Naresh Kumar, PW15 ASI Vijay Singh, PW16 SI Sukhvinder Singh, PW17-Inspector Jagdish Chander, PW18 ASI Rajpal, PW19 Constable Randhir Singh and PW20 Inspector Sher Singh. On closure of prosecution evidence, statements of the accused-appellants were recorded under Section 313 Cr.P.C. All the incriminating evidence was put to them, which was denied. In defence, no evidence was led by them.

5. On analyzing the evidence led by the prosecution, the learned Additional Sessions Judge convicted and sentenced the accused-appellants as noticed above.

6. Aggrieved appellants are before this Court.

7. Learned counsel has submitted that the trial Court has convicted the appellant without there being any evidence, test identification parade, as also no independent witness joined. The alleged recovery was effected from a place accessible to the others as well. There were also several material contradictions in the prosecution witnesses and a false case was foisted upon the accused-appellants.

8. Learned State counsel has filed the custody certificates of the appellants, which are taken on record. He opposes the appeal by stating that the trial Court after evaluating the evidence, has rightly convicted the appellants, therefore, he prays for the dismissal of the present appeal. He also submits that the appellants are the habitual offenders as they are involved in other cases.

9. Heard the learned counsel on either side and perused the record with their able assistance.

10. Evidently, PW1-complainant Sandeep Kumar in his testimony deposed that on 31.05.1997 at about 12.00/1.00 pm when he was in his office and handing over a payment of Rs.3700 to one Pawan Kumar, three persons came there, out of which two entered in his office and third one was outside. They snatched the amount from Pawan Kumar by pointing a knife and golden chain, golden ring and wrist watch from him.

11. It was not the case of the accused that they were having muffled faces. Regarding non-joining of the independent witnesses as well as test identification parade, it has been specifically mentioned by the trial Court that the

complainant himself was accompanying the police party, when they had gone to

Delhi in search of the accused. He had identified them. Recovery of stolen wrist watch was effected from the accused vide recovery memo Ex.PC, which was attested by the complainant and other police officials. Further in pursuance of disclosure statement of accused Raju, gold ring was also recovered vide recovery memo Ex.PE, as also recovery of gold chain in pursuance of statement of accused Surender was effected, vide Ex.PG. All these exhibits bear the signatures of the complainant and other police officials.

12. Even otherwise, it is a settled principle of law that if from other circumstances the accused is proved to be guilty then non-identification will not vitiate the case of the prosecution. A gainful reference can be made to **Matru vs. State of UP** (1971) 2 SCC 75, wherein it was observed that identification test do not constitute substantive evidence. These are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in the Court. It is observed that the substantive evidence is the evidence of identification in the Court. This evidence may be of its very nature inherently of a weak character but the purpose of prior test identification is to test and strengthen the trustworthiness of the evidence.

13. The failure to hold test identification parade would not make inadmissible the evidence of identification in the Court. The weight to be attached to such identification should be matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See **Kanta Prashad vs. Delhi Administration** AIR 1958 Supreme Court 350).

14. Hon'ble the Supreme Court in the case of **Visveswaran vs. State** (2003) 6 SCC 73, held that, “..The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence.” Reiterating the same in the case of **Prakash vs. State of Karnataka**, (2014) 12 SCC 133, it was held thus:

“15. An identification parade is not mandatory [Ravi Kapur v. State of Rajasthan, (2012) 9 SCC 284 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107] nor can it be claimed by the suspect as a matter of right. [R. Shaji v. State of Kerala, (2013) 14 SCC 266 : (2014) 4 SCC (Cri) 185] The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. [Rameshwar Singh v. State of J&K, (1971) 2 SCC 715 : 1971 SCC (Cri) 638] If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable [Mulla v. State of U.P., (2010) 3 SCC 508 : (2010) 2 SCC (Cri) 1150; Kishore Chand v. State of H.P., (1991) 1 SCC 286 : 1991 SCC (Cri) 172] unless the suspect has been seen by the witness or victim for some length of time. [State of U.P. v. Boota Singh, (1979) 1 SCC 31 : 1979 SCC (Cri) 115] In Malkhansingh v. State of M.P. [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247] it was held: (SCC pp. 751-52, para 7)

“7. ... The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact.”

15. It is a trite that in the event of non joining of independent witness during trial, the testimonies of the other prosecution witnesses should be scrutinized with a fine-tooth comb.

16. In **Kalpna Rai vs. State (through CBI)** (1997) 8 SCC 732 it was

observed by the Apex Court that, “There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined.”

17. Merely not holding the test identification parade would not in any manner taint the evidence of these witnesses, who stood the test of cross examination and the recovery of the stolen ornaments would lend credence to the identification done by the witnesses of the appellants in the court. Thus, on this count, the testimonies of these witnesses cannot be discarded and is trustworthy that this evidence, can be relied upon to sustain the conviction of the appellants, especially when this is well corroborated by the gold ornaments recovered, which were in the exclusive knowledge of the appellants.

18. In the instant case, the recoveries were made pursuant to the disclosure statements and were from such places, which were only known to the appellants, who had got them effected. Mere non-joining of the independent witness would also not cause a dent to the prosecution case. Further, there is no reason or cause that has been brought forth in defence of false implication of the appellants.

19. For the reasons abovementioned, the impugned judgment does not call for any interference by this Court. The conviction and the sentence awarded to the appellants by the trial Court, are thus, upheld. The bail bonds furnished by them are ordered to be cancelled and they be taken into custody to serve their

remaining sentence.

20. The present appeal stands dismissed, accordingly.

21. Registry is directed to send a copy of the judgment to the concerned Chief Judicial Magistrate for necessary compliance.

(AMAN CHAUDHARY)
JUDGE

19.02.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No