

SURENDER SINGH
v.
STATE OF HARYANA

JANUARY 17, 2006

[H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860—Sections 392, 394 and 397/Arms Act, 1925—Section 25—Prosecution under—Accused apprehended with incriminating material—Panch-witness, injured witness and complainant turning hostile during trial—Discrepancy in statements of witnesses—Conviction by Courts below—On appeal, held: Conviction justified—Though the witnesses turned hostile in some aspects, their statements otherwise proved the prosecution case—The discrepancies in the statements of witnesses are minor and are not of such nature creating infirmity in prosecution case—In view of the facts and circumstances of the case, interference with the concurrent finding of fact in Special Leave Petition not warranted—Constitution of India, 1950—Article 136.

Criminal Trial:

Discrepancy in evidence of prosecution witnesses—Effect of—Held: Every discrepancy in the witness statement cannot be treated as fatal—The discrepancy which does not affect the prosecution case materially, does not create infirmity.

Testimony of injured witness—Evidentiary value of—Held: Testimony of injured witness has its own relevancy and efficacy—Injury to the witness lends support to the testimony that witness was actually present during occurrence.

Appellants-accused alongwith another accused-A-2 were charged for offences u/ss. 392, 394 and 397 IPC and one of the appellants-accused was charged u/s. 25 of the Arms Act.

The prosecution case was that complainant (PW-9) and PW-2, when were going to deposit Rs. 62,000 with Bank, the accused confronted them. One of the appellants-accused was armed with pistol and A-2 was having knife. One of the appellants-accused tried to snatch the bag, and on

A resistance, A-2 gave knife blow on PW-2. Appellants-accused snatched the bag and ran away, while A-2 was caught by the public. PW-2 was medically examined. Police Inspector (PW-13) saw the appellants-accused being chased by public, and he apprehended them. From one appellant-accused a pistol, two live cartridges and currency notes amounting to Rs.5000/- was recovered. From another appellant-accused currency notes amounting to Rs.10,000/- was recovered. PWs-3 and 4 were the Panch witnesses. During trial PWs 2 and 9 and PWs 3 and 4 turned hostile. Trial Court convicted the accused for the offences charged. In appeal, High Court maintained the conviction but reduced the sentence u/ss. 394 and 397 IPC. In appeal to this Court, appellants contended that conviction was not justified as PWs 2,3,4 and 9 had turned hostile; that there was discrepancy in statements of the witnesses; that allegation of snatching Rs.62,000/- was not proved inasmuch only Rs.15,000/- was recovered; and that the recovered amount was not that which was alleged to have been snatched and the same was implanted by Police for false implication.

D Dismissing the appeals, the Court

HELD:1. The present case, in view of its evidence, is not of such a nature which would require interference of this Court under Special Leave jurisdiction. The finding of guilt recorded by the trial court and confirmed by the High Court has been challenged mainly on the basis of PWs 3 and 4 who are panch witnesses turned hostile and even PW-2 who is an injured witness and PW-9 the complainant turned hostile. The challenge to the concurrent finding of guilt is also on the basis of minor discrepancies in the evidence of prosecution witnesses. [436-A-B]

F 2.The minor discrepancy is not of such a nature, which creates infirmity in the prosecution's case. Every discrepancy in the witness statement cannot be treated as fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity. [436-B-C]

G 3. With regard to PWs 3 and 4 panch witnesses being turned hostile, the courts below held that their statements did not affect materially the prosecution story. Both the witnesses though stated that pistol or cartridges or currency notes mentioned in the Exhibits were not recovered in their presence, but they admitted their signatures over the Exhibits. Therefore, H both the courts correctly held that the Exhibits were recovered in the

presence of PWs 3 and 4 who were panch witnesses. [436-C-D]

4. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes. Although PW-2 was declared hostile, he has categorically stated that he had gone to the Bank to deposit the amount. He has also stated that 4-5 persons attacked him. He has also stated that they gave knife blows to him and snatched the bag from him. This statement is well corroborated by the injuries suffered by him on his person, which is proved by PW-5 as well as seizure of the bag along with the money. PW-2 even denied that he had gone to the bank with PW-9. The statement of PW-2 was belied by the statement of PW-9 who categorically stated that he had gone to the bank along with P.W.2. [437-C-F]

5. The plea that the allegation of snatching of Rs.62,000/- by the accused is not proved inasmuch as only Rs.15,000/- has been recovered from the bag is without any substance. The factum of recovery of pistol along with cartridges and the currency notes from the bag which was being carried by the appellants-accused is proved. [437-F-G]

6. It is nobody's case that the accused and the police had any previous enmity. It is also nobody's case that the complainant PW-9 and the injured PW-2 had any previous enmity with the accused which would warrant the foisting a false complaint against the accused. While it is true that the prosecution has failed to explain the whereabouts of rest of the amount, this itself would not vitiate the factum of recovery of Rs. 15,000/- from the possession of the accused along with other incriminating materials.

[438-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 345 of 2005.

From the Judgment and Order dated 20.09.2004 of the High Court of Punjab and Haryana in CrI. Appeal No. 453-DB of 2002.

WITH

Criminal Appeal No. 74/06.

R.C. Kaushik, Ujjal Singh, J.P. Singh and A.S. Pundir for the Appellant.

A Rajeev Gaur Naseem and T.V. George for the Respondent.

The Judgment of the Court was delivered by

H.K.SEMA, J. Leave granted in S.L.P (Cr.) No.1491 of 2005.

B Criminal Appeal No. 345 of 2005 is preferred by Surender Singh (A-1) and Criminal Appeal 74 of 2006 @ S.L.P. (Cr.) No.1491 of 2005 is preferred by Vikas (A-3). The appellants Surender Singh and Vikas were convicted by the Trial Court along with one accused Dharmender (not before us) for an offence under Section 392 and sentenced to undergo RI for seven years and to pay a fine of Rs.5000/- each and in default of payment of fine to further undergo RI for one year. They were also convicted for an offence under Section 394 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- each and in default of payment of fine to further undergo RI for one year. They were further convicted for an offence under Section 397 IPC and sentenced to undergo RI for ten years and to pay a fine of Rs.5000/- each and in default of payment of fine to further undergo RI for one year. The appellant Surender Singh was also convicted for an offence under Section 25 of the Arms Act and was sentenced to undergo RI for two years and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo RI for six months. All the sentences, however, were ordered to run concurrently. The High Court, on appeal, preferred by the accused, E reduced the sentence to seven years under Sections 394 and 397 IPC albeit without assigning any reasons. The sentence of the appellants under Sections 392 IPC and 25 of the Arms Act were, however, maintained. Aggrieved thereby, the accused-appellants preferred these appeals by special leave.

F Briefly stated the facts are as follows:-

G On 7.2.2000 at about 12.20 p.m. complainant Ramesh Batra (PW-9) along with Baldev Raj (PW-2) were going to deposit the sale proceeds of the petrol pump amounting to Rs.62,000/- with Oriental Bank of Commerce, Gannaur. When they were in front of the bank, three young boys confronted them. One of them was armed with pistol, another was having knife and the third one was empty handed. The scooter by which they were travelling was stopped and the boy who was empty handed tried to snatch the bag from Baldev Raj (PW-2). When PW-2 resisted, the boy who was armed with knife gave a knife blow on his person. Thereafter, the unarmed boy snatched the bag and tried to run away. On alarm being raised many persons came at the H spot and overpowered the boy armed with knife. The boy who was caught

at the spot told his name as Dharmender A-2 (not the appellant). He also disclosed the names of other two boys who had escaped with the bag as Vikas (Appellant in CrI.Appeal No.74/06 @ S.L.P (CrI.) No.1491/05 and Surender (Appellant in CrI.A.No.345/05). Thereafter, PW9 Ramesh Batra after sending PW-2 to the hospital went to lodge the complaint and also produced accused-Dharmender. The knife stained with blood was taken into possession by SI Jagdish Chander and on his statement FIR was recorded. At the same time when Inspector Prithvi Singh (PW-13) was coming from Lalheri side in a jeep, he received a wireless message that the accused Vikas and Surender fled with bag and they are being chased by the public. Then he saw the two accused Vikas and Surender being chased by the public. He apprehended them and took them into custody and they disclosed their names as Surender and Vikas. It was further disclosed from the search of Surender, a pistol, two live cartridges of 12 bore and a bundle of currency notes of the denomination of Rs.50/- each total amounting to Rs.5000/- having a chit of Oriental Bank of Commerce were recovered while two bundles of currency notes of the denomination of Rs.50/- each having the chit of Oriental Bank of Commerce, total amounting to Rs.10,000/- were recovered from the bag which was being carried by Vikas.

These two appeals are directed against a concurrent finding of facts recorded by two courts. In the case of *Bhurwada Bhoginbhai Hirjibhai v. State of Gujarat*, AIR (1983) Supreme Court 753, it has been held by this Court:

“A concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established: (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded.”

Learned counsel for the appellants has taken us through the evidence and we do not find that the circumstances as laid down by this Court as referred to above are available in the present case. The present case is not of such a nature, which would require our interference in Special Leave. The

A finding of guilt recorded by the Session's Court and confirmed by the High Court has been challenged mainly on the basis of PWs 3 and 4 who are panch witnesses turned hostile and even PW-2 who is an injured witness and PW-9 the complainant turned hostile. The challenge to the concurrent finding of guilt is also on the basis of minor discrepancies in the evidence of prosecution witnesses.

B

So far the minor discrepancy, which has been pointed to us, we are of the view that it is not of such a nature, which creates infirmity in the prosecution's case. It is a well-established principle of law that every discrepancy in the witness statement cannot be treated as a fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity.

C

With regard to PWs 3 and 4 *panch* witnesses being turned hostile, this contention was also well considered by the Trial Court and the High Court. And both the courts held that their statements do not affect materially the prosecution story. PW-3 stated that pistol or cartridges or currency notes mentioned in Ex.PC were not recovered in his presence. He, however, admitted his signatures over Ex.PC and Ex.PD. PW-4 also stated that the pistol, cartridges or currency notes mentioned in Ex.PC were not recovered in his presence. He also admitted that Ex.PC and Ex.PD bear his signatures. Therefore, both the courts correctly held that the Ex.PC and Ex.PD were recovered in the presence of PWs 3 and 4 who were *panch* witnesses.

D

E

P.W.2 who is an injured witness was examined by P.W.5 (Dr.) on 7.2.2000 and found the following injuries on his person:

F

"1. An incised wound 2 cm x ½ cm on the left side of the back 24 cm from left shoulder joint. 17 cms from left axillary line. Fresh bleeding present. Advised x-ray.

2. An incised wound 2 cm x ½ cm on left side of the back 2 cm from midline 5 cm medial to first injury. Fresh bleeding present. Advised x-ray.

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3. An incised wound 2 cm x ½ cm on left side of the back 12 cm from the left illisecrast 8 cm from midline fresh bleeding present. Advised x-ray.

4. An incised wound 2 cm x ½ cm on the right side of the back 2 cm

H

right to the midline 5 cm away from injury No.2. Fresh bleeding present. X-ray advised. A

5. An incised wound 2 cm x ½ on the right side of the chest 19 cm from anterior superior alliscrast 30 cm from midline. Fresh bleeding present. Advised x-ray.

6. An incised wound 2 cm x ½ cm on the right side of the chest 31 cm from midline 10 cm from anterior superior illise spins. Fresh bleeding present. Advised x-ray." B

The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes. Curiously enough even the injured witness PW-2 has turned hostile. Learned counsel for the appellants strenuously urged that PW-2 Baldev Raj stated that the accused were not the persons who attacked him and, therefore, the appellants are entitled to the benefit of doubt. This submission was considered by both the Trial Court and the High Court and rejected, in our view, rightly. Although PW-2 was declared hostile, he has categorically stated that he had gone to Oriental Bank of Commerce, Gannaur, to deposit the amount. He has also stated that 4-5 persons attacked him. He has also stated that they gave knife blows to him and snatched the bag from him. This statement is well corroborated by the injuries suffered by him on his person, which is proved by PW-5 as well as seizure of the bag along with the money. PW-2 even denied that he had gone to the bank with PW-9 Ramesh Batra. The statement of PW-2 was belied by the statement of PW-9 who categorically stated that he had gone to the bank along with P.W.2 Baldev Raj. The next submission of the counsel for the appellants is that the allegation of snatching of Rs.62,000/- by the accused is not proved inasmuch as only Rs.15,000/- has been recovered from the bag. This contention in our view has also no substance. The factum of recovery of pistol along with cartridges and the currency notes of the denomination of Rs.50/- amounting to Rs.5000/- from the possession of Surender and the currency notes of the denomination of Rs.50/- each amounting to Rs.10,000/- from the bag which was being carried by Vikas is proved. The other contention of the learned counsel for the appellants that the money so recovered from the accused Vikas and Surender was not the amount, which is stated to have been snatched away from PW-2 as the whereabouts of rest of Rs.47,000/- has not been explained by the prosecution but it was implanted by the C D E F G H

- A police for false implication. It is nobody's case that the accused and the police had any previous enmity. It is also nobody's case that the complainant PW-9 and the injured PW-2 had any previous enmity with the accused which would warrant for foisting a false complaint against the accused. While it is true that the prosecution has failed to explain the whereabouts of rest of the amount, this itself would not vitiate the factum of recovery of Rs.15,000/-
- B from the possession of the accused along with other incriminating materials. It must be grasped that the two appellants herein were apprehended along with the incriminating materials while fleeing and the accused No.2 Dharmender was apprehended on the spot.
- C For the reasons afore stated the two appeals are devoid of merits and are accordingly dismissed.

K.K.T.

Appeals dismissed.