
(2015) 05 SHI CK 0092

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 413 of 2012

Jasvir Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313
Penal Code, 1860 (IPC) — Section 323, 342, 395

Citation : (2015) 05 SHI CK 0092

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : Vijay Arora, for the Appellant; M.A. Khan, Additional Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.

1. This appeal is instituted against Judgment dated 18.5.2012 rendered by learned Additional Sessions Judge, Fast Track Court, Solan, Himachal Pradesh in Session Trial No. 19FTC/7 of 2009, whereby appellants-accused (hereinafter referred to as "accused" for convenience sake), who were charged with and tried for offences punishable under Sections 395, 342 and 323 IPC, have been convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,000/- each, in default of payment of fine, to further undergo imprisonment for six months under section 395 IPC. They were further sentenced to undergo imprisonment for six months and to pay a fine of Rs. 1,000/- each, in default of payment of fine, to further undergo imprisonment for two months under Section 342 IPC. They were also sentenced to undergo imprisonment for three months and to pay a fine of Rs. 500/- each, in default of payment of fine, to further undergo imprisonment for one month under Section 323 IPC.

2. Case of the prosecution, in a nutshell, is that on 8.5.2009, complainant

Rakesh Kumar, driver of Innova car No. HR-68-7167 was approached by Satveer Singh for taking him and other co-accused to Shimla, Kufri and back. Deal was finalised for Rs. 2700/-. Accused persons boarded the vehicle. Accused asked the complainant to go back to Chandigarh via Chail. While proceeding from Chail to Solan, at a place known as Chiunth, accused asked Rakesh Kumar to stop the vehicle as one of the co-accused wanted to vomit. Thereafter, Rakesh Kumar stopped the vehicle. He went out to answer the call of nature. Accused persons deboarded the vehicle and snatched his Sony Ericsson phone, purse containing Rs. 2700/- from him and in furtherance of common intention, dragged the complainant to distance of 15-20 feet. He was tied to a Chil tree with the help of turbans. Accused took away his vehicle in which they were travelling. Rakesh Kumar managed to free himself. He approached a nearby house. He knocked the door of house of Dharam Singh PW-1 and narrated the incident to him. He informed Shri Yashwant Singh. Yashwant Singh informed Lokeshwar Sharma. Lokeshwar Sharma informed the police check post Sadhupul. Rapat was recorded. Statement of complainant under Section 154 CrPC was recorded, which led to registration of FIR No. 42/2009. Vehicle was intercepted at Kandaghat. Complainant was got medically examined. Investigation was completed. Challan was put up in the Court after completing all the codal formalities. Accused were convicted and sentenced as noticed herein above. Hence this appeal.

3. Prosecution has examined as many as 18 witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. They pleaded innocence.

4. Mr. Vijay Arora and Mr. Umesh Kanwar, advocates, have vehemently argued that the prosecution has failed to prove its case against the accused.

5. Mr. M.A. Khan, Additional Advocate General, has supported the judgment of trial court dated 18.5.2012.

6. We have heard the learned counsel for the parties and gone through the judgment and record very carefully.

7. PW-1 Dharam Singh deposed that in the month of May 2009, he was present in his field. One person came to their house and knocked at the door of his house. He did not remember the date. His wife did not open the door of the house. On hearing the noise, he went to his house. He told Dharam Singh that "Meeri Gadi Chale Gaye". He did not remember the name of the person. He disclosed that some persons deboarded the vehicle. Thereafter, he contacted Yashwant Chauhan. He was declared hostile. He was cross-examined. He admitted that one person was present. Thereafter he enquired his name. He did not remember that the name of the boy was Rakesh. He denied the suggestion that boy told him that when he was coming from Shimla to Chail Chowk, 5-6 persons tied him to a tree in jungle, near his house. His vehicle, purse and mobile phone were snatched. He has denied the portion "A-A" and "B-B" of the statement mark "X".

8. PW-2 Yashwant Singh stated that at about 11.15-11.30 PM, he received a telephonic message from Dharam Singh. He informed that a person came to his house, he was perplexed and frightened. He told that his vehicle was snatched. He informed one Lokeshwar Sharma at Sadhupul that a person had come to the house of Dharam Singh. He was tied to a tree near the house of Dharam Singh by 5-6 persons and his vehicle had been snatched away. Name of the person was not told to him because he was hurriedly informed about the incident. He was declared hostile and cross-examined by the Public Prosecutor. He denied the suggestion that Dharam Singh has also intimidated him on mobile phone that the person also disclosed his name as Rakesh Kumar and he looked like a Punjabi.

9. PW-3 Lokeshwar Sharma informed the police at Police Station Kandaghat.

10. PW-4 Rajesh Kumar deposed that on 8.5.2009, at about 11.15 pm, he alongwith ASI Gulab Singh, HC Yash Pal, HC Mehar Singh, HHC Jagjiven and Constable Devender was on patrol duty in a government vehicle and when were present at Chail Chowk at Kandaghat, then at about 12.30 AM, one vehicle came from Chail side which was stopped and checked. It was found to be Innova. Accused were apprehended but one Satveer managed to run away. In his cross-examination, he has admitted that the case property in every case is put in a sealed packet or parcel. In the case in hand, case property was not in a sealed cover. He admitted that articles produced in the Court did not bear any identification mark.

11. PW-5 Jai Bhagwan is the owner of the vehicle.

12. PW-6 Gulab Singh has deposed the manner in which accused were apprehended at Kandaghat. He also admitted in his cross-examination that Ext. P1 to P12 were not sealed on the spot and no seal was affixed on the cloth.

13. PW-7 Dr. Rakesh Malhotra has examined Rakesh Kumar, the complainant and has issued MLC Ext. PW-7/B. According to him, injuries No. 1 to 5 were simple in nature and could be caused with blunt objects. Probable duration of injuries was 12-24 hours.

14. PW-8 is a formal witness.

15. PW-9 Dinesh Kumar was posted as daily wage employee at Check Post Sadhupul from 1998 to October, 2009. On 8.5.2009, he was on duty at check post at Sadhupul. He did not remember the number of the vehicle. According to him, it was "HR.... something".

16. PW-10 Manoj Kumar has testified that accused have asked Rakesh Kumar that they wanted to hire vehicle from Shimla to Chail. Amount was fixed at Rs. 2700/-.

17. PW-11 is a formal witness.

18. PW-12 Rakesh Kumar deposed that he was a driver in Innova vehicle. It was owned by one Jai Bhagwan. He was at Bus Stand alongwith Rahul alias Manoj.

One Sardar came with five persons including one Bihari and told him that they wanted to visit Shimla, Kufri and back. They started from Panchkula to Solan. He came to know their names during journey when they went to Shimla. He took them to Kufri. They told that they wanted to go back via Chail. He went from Kufri alongwith six persons and they took bottle of liquor and bear. He was told that one person wanted to vomit. He stopped the vehicle parked it on the side of the road. He went to attend the call of nature. Lovely also deboarded the vehicle and they snatched his articles i.e. purse, Sony Ericsson mobile and took dragged him to 15-20 feet and tied him with a Chil tree with the help of turbans and tape was affixed on his mouth. They took the vehicle towards Solan. After 30 minutes, he got himself free. He went to the house and knocked at the door. He narrated the story to Dharam Singh and he further told the police. This instance happened at about 11.15 pm. In his cross-examination, he has admitted that when a vehicle from a taxi union is hired by any person, same is entered in the register of the Union in respect of the departure of the vehicle from taxi stand to the place to where vehicle is hired and a chit is issued by concerned official of the taxi union. Again stated that as a rule, the chit is issued and departure of vehicle is registered. Volunteered that at Panchkula there is no such rule prevalent anywhere in taxi unions. In his cross-examination, he has admitted that he could not tell whether there was any village located nearby where he was allegedly tied by accused persons.

19. PW-13 Hem Raj deposed that on 9.5.2009, he alongwith Dinesh was going to Sadhupul on scooter. The police stopped them near Chiunth. They went 15-20 feet from the road towards upper side of the road on Chail road which is known as Chiunth forest. Clothes tied with Chil trees and other articles were sealed in a white cloth parcel and sealed with seal but he did not remember what seal was used. Memo was prepared. He put his signatures. He identified Ext. P14 to P19. He was declared hostile. He admitted in his cross-examination that Ext. PW-12/A was not read over and explained to him. He simply signed the same.

20. PW-14 is a formal witness.

21. PW-15 Liaq Ram deposed that on 8.5.2009, at 11.50 pm Lokeshwar Sharma intimated the police station on telephone that Yashwant Chauhan resident of village Chiunth informed him on telephone by Dharam Singh that one person came and informed that his vehicle was taken away and driver has come to his house. He told that he was tied to a tree. He registered the FIR Ext. PW-15/A.

22. PW-16 Sudhir Kumar deposed that on 8.5.2009, a telephonic information was received from the Police Station Kandaghat that one driver was tied to a Chil tree by 5-6 persons and they have fled away with the vehicle. He alongwith Durga Singh proceeded to the spot in a private vehicle. They searched for the vehicle in Chiunth forest and Sadhupul and when they reached near the house of Dharam Singh which is near the road, one person named Rakesh Kumar met them and made statement, which was recorded under Section 154 CrPC, Ext. PW-12/A. He alongwith complainant, visited Chail Chowk at Kandaghat. Recoveries were

effected from the accused. Vehicle was taken into possession. He visited the spot and prepared map Ext. PW-16/A. He took photographs of the spot. Turbans were also taken into possession. Mobile phone Ext. P1, Purse Ext. P4, currency notes Ext. P5 to Ext. P9, challan chits Ext. P-2 and P-3 and two Sim cards were taken into possession, which belonged to the accused Lovely. Statements of witnesses were recorded. In his cross-examination, he has admitted that in the statement of Rakesh Kumar, he has not mentioned that he was tied with turbans and he also admitted in Ext. PW-12/A, complainant has not told that he was tied in the jungle. He could not narrate the name of the photo studio, where photographs were got developed.

23. PW-17 Dinesh Sharma deposed that he alongwith his maternal uncle was going to Sadhupul on scooter. He did not remember the day, however, year was 2009. Later stated that it was the month of October. He put his signatures on Ext. PW-12/B. He was declared hostile. He denied the suggestion that Rakesh Kumar was with the police party which led them to upper side of the road at Chiunth Forest. He also denied the suggestion that police has taken into possession the clothes, turbans. He denied that memo was prepared.

24. PW-18 is a formal witness.

25. Case of the prosecution precisely is that accused have hired vehicle at Pacnchkula to visit Shimla. They came to Shimla. They went to Kufri from Shimla. Accused insisted that they should go to Chandigarh via Chail. On their way, vehicle was stopped. PW-12 complainant also came down. He was tied to a tree. Vehicle was driven towards Kandaghat. His articles i.e. purse, Sony Ericsson phone etc. etc. were also taken away. He was tied to a tree but he managed to get himself free. Thereafter, he visited the house of Dharam Singh PW-1. Dharam Singh has informed PW-2 Yashwant Singh (PW-2). Yashwant Singh informed Lokeshwar Sharma, who further informed the police. Accused were apprehended at Kandaghat. Vehicle was detained. Recoveries were made from the accused. Complainant was got medically examined. According to the averments contained in Ext. PW-12/A, recorded under Section 154 CrPC, he was tied to a tree. He got himself free and went to a nearby house. He narrated the incident and thereafter police was informed. In his statement recorded under Section 154 CrPC, it is mentioned that he was not beaten. He did not receive any injuries. He did not want to get himself medically examined. PW-1, in his statement recorded under Section 161 CrPC has specifically mentioned that he came back after irrigating his field and a boy was talking to his wife. He told that his name is Rakesh Kumar. However, PW-1 Dharam Singh did not name the boy in his statement. He was declared hostile. PW-2 Yashwant Singh, in his examination-in-chief has categorically admitted that the name of the person was not told to him because information was given to him hurriedly. PW-4 Rajesh Kumar in his cross-examination, has admitted that the articles produced in the Court did not bear any identification mark and property was not in a sealed cover. PW-6 Gulab Singh has also admitted in his cross-examination that articles Ext. P1 to P12 was case

property but they were not sealed and no seal was affixed on the cloth. Though, PW-12 Rakesh Kumar while recording statement under Section 154 CrPC has stated that he was not beaten up and he has not received any injury and did not want to get himself medically examined, Dr. Rakesh Malhotra (PW-7) has noticed five simple injuries on his body, though the nature of injuries was simple. PW-9 Dinesh Kumar was at Check Post at Sadhupul however, he has not noted the number of the vehicle only on the pretext that his senior officers told him that numbers of the light vehicles should not be registered at the check post. He did not remember the number of vehicle except that it was HR.... something. He was supposed to enter the number of vehicle in the register. According to PW-12 Rakesh Kumar, he was tied to a tree near a village but he did not remember whether there was any village located where he was allegedly tied by the accused persons. In his cross-examination, he has admitted that when vehicle is hired from Transport Union by a person, same is entered in a register of the Union and a chit is issued. However, in this case, no chit has been produced. PW-13 Hem Raj has sent memo Ext. PW-4/B. He identified Ext. P14 to P19. He was declared hostile. He did not remember that Rakesh Kumar was also present and he has shown the spot where he was tied with turbans, his mouth was gagged with tape. Though he has identified the signatures on Ext. PW-12/B. Similarly, PW-17, Dinesh Sharma was also declared hostile. He identified signatures on Ext. PW-12/B. He denied the suggestion that Rakesh Kumar was also with the Police party who led them to the upper side of the road in Chiunth forest. He denied the suggestion that police has taken into possession the clothes, turbans and one tape. PW-12 Rakesh Kumar has not stated in Ext. PW-12/A that he was tied with the help of turbans. PW-16 ASI Sudhir Kumar has admitted that PW-12 Rakesh Kumar has not mentioned in his statement recorded under Section 154 CrPC that he was tied with turbans. PW-16 has also admitted that no memo was prepared regarding their presence at Chail Chowk at Kandaghat. According to him, Head Constable Durga Singh was sent to the Bazaar to procure independent witnesses. Durga Singh told that shops were closed. No statement of Durga Singh was recorded to this effect. Witnesses of recovery memo Ext. PW-4/A were police officials. He did not remember the name of the photo studio, where photographs were developed. Recovery of Ext. P14 to P19 is doubtful since the same is not supported by PW-13, Hem Raj, and PW-17 Dinesh Sharma. PW-1 Dharam Singh and PW-2 Yashwant Singh have not supported the case of the prosecution. They were confronted with statements recorded under Section 161 CrPC. Neither PW-1 Dharam Singh nor PW-2 Yashwant Singh has mentioned the name of the complainant. Complainant himself has stated that he has not received injuries. He never wanted to be medically examined. Case property was not put in a parcel nor it was sealed. Case property did not bear any identification mark. PW-16 ASI Gulab Singh has admitted that place where accused were apprehended was a busy place but despite that no independent witnesses were associated. Similarly, PW-6 has also admitted that Ext. P1 to P12 were part of case property but these were not sealed at spot nor seals were affixed on cloth. PW-9 has not registered the

vehicle number, though he was present at the barrier. He did not remember the full number of the vehicle. According to him, it was HR... something. According to him, he was told by superior officers not to enter the numbers of light vehicles. However, no instructions were placed on record.

26. We have already noticed that neither PW-13 nor PW-17 supported the case of the prosecution qua recovery of Ext. P14 to P19.

27. Accordingly, the appeal is allowed. Judgment dated 18.5.2012 rendered by learned Additional Sessions Judge, Fast Track Court, Solan, Himachal Pradesh in Session Trial No. 19FTC/7 of 2009 is set aside. Accused are acquitted of the offences under Section 395, 342 and 323 IPC. They are ordered to be released forthwith, if not required in any other case by the Police. Registry is directed to prepare and send the release warrant of the accused to the concerned Superintendent of Jail immediately. All pending applications are also disposed of.