
(2017) 09 CAL CK 0059
In the Calcutta High Court
Case No : 499 of 2010

Pramod Sharma

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 164](#) - Power to examine the accused - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 09 CAL CK 0059

Hon'ble Judges : Debasish Kar Gupta, Md. Mumtaz Khan

Bench : DIVISION BENCH

Advocate : Indranil Roy Chowdhury, Ranabir Roy Chowdhury, Mainak Gupta

Judgement

1. This appeal is directed against judgment and order of conviction dated May 28, 2010 and sentence dated May 29, 2010 passed by the learned Additional District & Sessions Judge, 9th Fast Tract Court, Bichar Bhawan, Calcutta in Sessions Trial No.1(6) of 2009 arising out of Sessions Case No.64 of 2009 convicting the appellant and one Sambhu Mahato for commission of offence punishable under Sections 392/120B of Indian Penal Code (hereinafter referred to as the I.P.C.) and sentencing them to suffer rigorous imprisonment for 10 (ten) years each as also to pay fine of Rs.1000/- each in default undergo simple imprisonment for another six months. The sentences were directed to run concurrently.

2. One Sandip Pramanick (PW 3) was running a hardware shop under the name and style Maa Laxmi Hardware (hereinafter referred to as the said shop) at 78 Netaji Subhas Road, Police Station-Barabazar, District-Kolkata. Biraj Das (PW 4), was the manager of the said shop. There were three other employees in the said shop namely, Ranjit Jana (PW 5), Tapas Maity and Sridam Mondal.

3. On December 30, 2008 at 10.15 hours the PW 4 along with PW 5 opened the

said shop. At about 10.35 hours three persons, aged about 25/35 years, entered into the said shop and started enquiring about the price of various items. Suddenly, one of them went towards the PW 5, who was sitting on the "gadi" and pressed him at a gunpoint. Another person out of the aforesaid three persons hold neck of two other employees of the said shop at the gunpoint and put them inside the shop from the front counter for restraining them to make any noise. The remaining one out of the aforesaid three persons board on the wooden "macha" (an overhead platform) of the said shop with the help of ladder and transferred a sum of Rs.2 lakhs from a discoloured tin box into his bag and proceeded towards Cotton Street from the shop room. The remaining two persons went towards Netaji Subhas Road leaving the said shop room. The owner of the said shop, PW 3, was informed of the incident by PW 4.

4. PW 3 informed the Barabazar Police Station of above incident at 12.15 hours on the same day i.e. on December 30, 2008 over telephone.

5. On receipt of the above information O.C. Barabazar Police Station and Sub-Inspector Ashoke Kr. Ghosh (PW 11) attached to the above P.S. arrived at the place of occurrence. Subsequently, Sub-Inspector Kartik Chandra Misra, PW 10, arrived at the place of occurrence. After recording the statements of the witnesses and seizure of a broken trunk containing various papers, accounts of the business, lock and keys, the PW 10 further informed the matter to the finger print expert, foot print expert, plan making section, photography section of the Detective Department, Kolkata Police and also to his superior officers. The photographer, plan making reached at the place of occurrence and took photographs, prepared the plan. They returned back to the police station. Formal FIR bearing Barabazar P.S. Case No.256 dated December 30, 2008 was drawn up against three unknown miscreants for commission of offence punishable under Sections 392/397 I.P.C. and Sections 25 (1B) (2)/27 of the Arms Act.

6. The above case was transferred to the Anti-Dacoity and Robbery Squad, Detective Department, Lalbazar on January 3, 2009, engaging PW 12 for investigating into the matter on the basis of an order passed by the Officer-in-Charge, Anti Dacoity and Robbery Squad, Detective Department, Lalbazar. On receipt of an information from secret source, the appellant was arrested by a team headed by PW 12 on January 5, 2009 from Goriari Chawk, P.S.-Bakhri, Dist.-Begusarai, Bihar.

7. The other accused person Sambhu Mahato was arrested in January 8, 2009 from 98, Cotton Street, Kolkata, on the basis of the information from the appellant.

8. On January 22, 2009, the confessional statement of the other accused person Sambhu Mahato was recorded under Section 164 Cr.P.C. by the PW 8.

9. The appellant and the other accused person Sambhu Mahato were identified in Test Identification Parade by the PW 4, PW 5 and PW 6 on January 29, 2009.

10. Charge sheet bearing No.54/2009 dated April 3, 2009 was filed against the appellant and the aforesaid Sambhu Mahato for commission of offence punishable under Sections 397/395/120B I.P.C. showing another accused person Lalan Mahato as absconder.

11. Charge was framed against the appellant as also the aforesaid Sambhu Mahato on June 15, 2009 for commission of offence punishable under Sections 395/120B I.P.C.

12. After considering the evidence of 12 (twelve) prosecution witnesses including 3 (three) eyewitnesses, documentary evidences as also statements made by the accused persons under Section 313 Cr.P.C., the impugned judgment, order of conviction and sentences were passed.

13. It is submitted by Mr. Indranil Roy Chowdhury, learned advocate that though the FIR was drawn on December 30, 2008 at 10.35 hours and the same was placed before the Chief Metropolitan Magistrate on December 31, 2008 without assigning any reason for delay in forwarding the same to the Court.

14. It is also submitted by him that though the FIR was lodged against three unknown miscreants and according to the evidence of PW 4, a group of 4/5 persons were waiting in the Hukko Potti before entering into the said shop room and according to the evidence of PW 5, 7/8 persons were following PW 4 before entering into the said shop room, which was corroborated by the evidence of PW 7, only three persons were charge sheeted. Trial commenced against only two accused persons.

15. It is also submitted by him that though the appellant was arrested on January 5, 2009 and the another convict was arrested on January 9, 2009, there was inordinate delay in holding the Test Identification Parade on January 29, 2009, having no explanation for such delay.

16. Drawing our attentions towards the reply of the appellant in respect of Question nos.17, 19 and 21 while recording his statement under Section 313 Cr.P.C. that he had been introduced to PW 4, PW 5 and PW 6 before the Test Identification Parade took place. According to him, the prosecution failed to prove its case in the manner in which it was sought to be projected.

17. It is submitted by Mr. Ranabir Roy Chowdhury, learned State Advocate, that according to the prosecution case, the incident took place on December 30, 2008 at 10.35 hours. The FIR was forwarded to the Court of the Chief Metropolitan Magistrate on the next day, i.e. on December 31, 2008. Therefore, there was no delay in forwarding the FIR to the Court.

18. It is submitted by him that the charge sheet was filed against the appellant and Sambhu Mahato with a special remark in appropriate column that the name of another accused person surfaced during investigation who could not be arrested till the date of filing of charge sheet.

19. With regard to alleged delay in holding the Test Identification Parade, it is submitted by him that the appellant and the other convict were in police custody till January 22, 2009. Prayer for holding Test Identification Parade was submitted before the learned Magistrate in the meantime on January 21, 2009. But the learned Court fixed the date of Test Identification Parade on January 29, 2009, i.e. after expiry of the period when they were in police custody.

20. Drawing our attentions towards the evidence of eyewitnesses PW 4 and PW 5, the identification of the appellant and the aforesaid Sambhu Mahato by PW 4, PW 5, PW 6 and PW 7 in Test Identification Parade as also in Court, the confessional statement of the other accused Sambhu Mahato, which was recorded on January 22, 2009, under Section 164 Cr.P.C., it is submitted by him that the prosecution case was proved beyond all reasonable doubts.

21. Having heard the learned Counsels appearing for the respective parties as also after considering the facts and circumstances of this appeal carefully we find that the first contention of the appellant is the alleged delay in forwarding the FIR to the Court of the learned Magistrate concerning creating alleged doubt with regard to the manner in which the prosecution case was sought to be projected, we find that it is not in dispute that the date of occurrence of the incident was December 30, 2008 at 10.35 hours. Admittedly, the written complaint was received in the Barabazar Police Station, Kolkata, from PW 3 at 12.15 hours on the same day. It is not in dispute that the above FIR was forwarded to the Court of the Chief Metropolitan Magistrate, Kolkata, within 24 hours from the time of lodging the same, i.e. on December 31, 2008. Therefore, there was no delay in forwarding the FIR to the Court.

22. Regarding the next contention of the appellant, it appeared from the evidence of the eyewitnesses PW 4, the manager of the said shop, PW 5, an employee of the said shop, that three miscreants entered in the said shop at the material point of time. They were the appellant, Sambhu Mahato and Lalon Mahato. Charge sheet was filed against the appellant as also Sambhu Mahato. The charge sheet contained special remarks that the name of Lalon Mahato surfaced during investigation also but he could not be arrested. Charge was framed against the appellant and Sambhu Mahato. Therefore, the impugned judgment does not require our interference on that ground also.

23. Regarding the next contention of the appellant was that there was inordinate delay in holding the Test Identification Parade. After considering the materials on record we find that the appellant and the other accused person Sambhu Mahato were in police custody till January 22, 2009. Prayer for holding Test Identification Parade was submitted before the learned Magistrate on January 21, 2009, i.e. the period in which they were in police custody. The statement of the aforesaid Sambhu Mahato was recorded under Section 164 Cr.P.C. on January 22, 2009. The date of Test Identification Parade was fixed by the Learned Court below on January 29, 2009. Considering the evidence on record we find that the appellant and the aforesaid Sambhu Mahato were identified in the Test Identification

Parade by PW 4, PW 5, PW 6 and PW 7. They were also identified in Court by the aforesaid witnesses. After overall assessment of the above evidence on record we are not inclined to interfere with the impugned judgment on this ground.

24. Regarding the other contention of the appellant with regard to the Test Identification Parade, we find that no objection was raised before or at the time of Test Identification Parade either by the appellant or by the Sambhu Mahato before the learned Metropolitan Magistrate, 5th Court, Calcutta, PW 8, that the appellant had been identified by the police to the PW 4, PW 5 or PW 6 earlier. Therefore, the above contention cannot be entertained at this stage.

25. The appeal stands dismissed.

26. Let this judgment together with the Lower Court's records be sent back to the learned Court below expeditiously.

27. Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.