

(2018) 04 CAL CK 0105
In the Calcutta High Court
Case No : C.R.A. 422 of 2010

SAMBHU MAHATO

APPELLANT

Vs

THE STATE OF WEST BENGAL

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 392, 395, 397
Code of Criminal Procedure, 1973 — Section 482

Citation : (2018) 04 CAL CK 0105

Hon'ble Judges : JOYMALYA BAGCHI, J;RAVI KRISHAN KAPUR, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J

The appeal is directed against judgement and order dated 29.5.2010 convicting the appellant for commission of offence punishable under Sections 392

/120B of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to suffer

simple imprisonment for six months more.

The prosecution case, as alleged against the appellant and co-accused Promod Sharma, is to the effect that 3-4 persons with deadly weapons

committed robbery to the tune of Rs.2 lacs from the shop of M/s. Laxmi Hardware Stores at 78, Netaji Subash Road, Calcutta â?" 700 007.Â On the

written complain of Sandeep Pramanick (P.W.3) first information report was registered against unknown accused persons.

In the course of investigation, the appellant and co-accused were arrested and were identified in T.I. parade by the witnesses. The appellant made

confession before the Magistrate and charge sheet was filed under Section

395 /397/120B of the Indian Penal Code. Charges were framed under the aforesaid sections against the accused persons. They pleaded not guilty and claimed to be tried.

In the course of trial, prosecution examined 12 witnesses and exhibited a number of documents. The defence of the appellant was one of innocence and false implication.

I have perused the evidence on record. I find that the shop owner, Sandeep Pramanick (P.W.3) upon being informed of the robbery which took place on 30th December, 2008 at about 10.30 a.m. came to the shop around 11.45 a.m. and informed Burrobazar Police Station over telephone around 12.15 p.m.

Police came to the shop and recorded his statement which was treated as first information report. The police seized cash memo, cash voucher, letterhead, tin boxes with lock, bills etc. from the place of occurrence under a seizure list. They were exhibited and identified by the said witnesses.

P.W.11, Ashok Kr. Ghosh was a S.I. of Calcutta Police attached to Burrobazar Police Station at that material point of time. He deposed that he received telephonic information from P.W.3 with regard to the said robbery and lodged general diary being G.D. Entry No. 3143 dated 30.12.2008 which was exhibited by him.

P.W.4, Biraj Das and P.W.5, Ranjit Jana were employees of the said shop. They deposed that they were present at the shop at the time of robbery.

P.W.4 stated that while he was coming to the shop, he saw one Mutia with 4-5 persons standing at Hukko Potti more. Subsequently the said persons came to the shop and started making enquiries from him. When he questioned them, they stated that they wanted to open a new shop.

Thereafter one of them brandished a pistol at him and the others committed robbery from the tin box and took away a sum of Rs.2 lacs therefrom.

P.W.5 the co-employee corroborated the version of P.W.4. Both the witnesses identified the appellant and co-accused in T.I. parade as well as in court.

P.W.6 is the owner of another hardware shop, which is adjacent to the shop where the robbery took place. He corroborated the version of P.W.4 and

5. He identified the appellant and co-accused in court as well as in T.I. parade.

P.W.7, Bhim Chandra Gautait is an employee of Metal Hardware Stores and Ma Laxmi Hardware which is another hardware shop adjacent to that

of P.W.3. He also corroborated the evidence of other witnesses. He, however, identified only Prosad Sharma in court and T. I. Parade.

P.W.8 was the Metropolitan Magistrate, 15th Court at Calcutta who held T.I. Parade. He deposed that P.Ws.4, 5 and 6 identified the appellant and

Promod Sharma in the course of T. I. Parade whereas P.W.7 identified only Promod Sharma. P.W.4 stated that co-accused Promod Sharma had

held a pistol at him at the time of robbery while the appellant was the Mutia who was standing at Hukko Potti immediately prior to the place of

occurrence. He proved the T.I. Parade report (Ext.19). He also deposed that the appellant had confessed his guilt before him. He proved the confession (Ext.20).

P.W.9 is the owner of the building where the hardware shop of P.W.3 was situated.

P.Ws.10 and 12 are the Investigating Officer of the case. P.W.12 stated that he arrested Promod Sharma from Begusarai and pursuant to his

statement he arrested the appellant on 8.1.2009 and produced him before the Magistrate.

He filed applications praying for T.I. Parade as well as for recording confession of the appellant. He collected the T.I. parade report as well as the

confessional statement of the appellant and finally submitted charge sheet.

It has been pleaded that there is delay in recording the first information report. Analysis of the evidence on record shows that P.W.3 the owner of

the shop reached the place of occurrence around 11.45 p.m. and soon thereafter informed Burrobazar Police Station about the incident.

Subsequently, the police came to the place of occurrence and FIR was registered. The aforesaid factual matrix does not show that there is any

delay in lodging the first information report so as to cast a doubt as to the genuineness of the prosecution case.

It has also been pleaded that there was delay in holding T. I. Parade. The appellant was produced before the Magistrate on 9.1.2009 and was

remanded to police custody till 22.1.2009. In the meantime, prayer for T.I. Parade was made and such examination was held on 29.1.2009. Evidence

of the prosecution witnesses particularly P.Ws.4 and 5 show that they had described the physical feature of the miscreants at the earliest opportunity

and the T.I. parade was conducted after following all possible safeguards.

The plea that the appellant had been shown to the witnesses during police custody was not raised during T. I. parade and is clearly an afterthought and is liable to be discarded.

That apart, the appellant had made a confessional statement before the Magistrate (Ext.20). No doubt, subsequently the appellant retracted such

statement.Â However, nothing has been placed on record to show that the appellant was subjected to either torture or undue harassment in police

custody to elicit the confession. No question to that effect were posed to the Investigating Officer (P.W.12) and in the aforesaid factual matrix, I am

of the opinion that the confession recorded by the Magistrate does not suffer from any lack of voluntariness and is trustworthy.

Moreover, the confession of the appellant has been corroborated by independent witnesses like P.Ws.4, 5, 6 and 7 in material particulars and hence, I

am of the opinion that the prosecution has been able to prove its case beyond reasonable doubt.

Accordingly, the conviction and sentence of the appellant are upheld.

The appeal is dismissed.

Period of detention suffered by appellant during investigation, enquiry or trial shall be set off against the substantive sentence imposed upon him under

Section 428 of the Code of Criminal Procedure.

Copy of the judgment alongwith LCR be sent down to the trial court at once.