
(2017) 02 MP CK 0059
In the Madhya Pradesh High Court
Case No : 2833 of 2015

Sanjay @ Kaalu @ Sanju

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 162](#), [Section 374](#) - Statements to police not to be signed-use of statements in evidence - Appeals from convictions
[Indian Penal Cod](#)

Citation : (2017) 02 MP CK 0059

Hon'ble Judges : Anurag Shrivastava

Bench : Single Bench

Advocate : Ranno Rajak, Vivek Lakhera

Final Decision : Allowed

Judgement

1. This criminal appeal under Section 374 of Cr.P.C. has been preferred by the appellant/accused against the judgment dated 24.08.2015, passed by Special Judge (Prevention of Atrocities SC/ ST Act) Bhopal, in S.T. No.520/2011, whereby, the appellant has been convicted under Section 392 of IPC and sentenced to undergo imprisonment for 5 years and fine of Rs.500/- with default stipulation.

2. The prosecution story in short is that on 07.11.2008 at around 11:45 AM in front of Tanantan Dhaba at Ayodhya By- pass road Bhopal, while returning to home, complainant Smt. Ranjana Sharma was waiting for bus. Meanwhile, the appellant arrived there by motorcycle and snatched the golden chain weighing about 10 grams worth Rs.10,000/- from the neck of complainant and flew away. The complainant has lodged the FIR Ex.P-1 in police station Piplani, where an offence under Section 392 of IPC has been registered and investigation was initiated. On 03.06.2011 the police got information regarding some criminal elements assembled in Durga Nagar slum area in order to commit the crime. The

town inspector police station Bagsewaniya namely C.P. Dwivedi alongwith staff went to Durga Nagar and intercepted the appellant and other anti-social elements. On interrogation of appellant, a large number of offences relating to chain snatching and robbery committed by him were discovered. On memorandum of appellant, the police has recovered the golden chain of complainant. The identification of chain and appellant was conducted by Tahsildar, in which complainant has identified both. Thereafter, charge-sheet has been filed before the trial Court against the appellant and other two co-accused persons.

3. The trial Court has framed the charge against the appellant under Section 392 of IPC. Appellant abjured guilt. The prosecution witnesses were examined. Appellant has not adduced any evidence in his defence. After considering the evidence, the trial Court vide judgment dated 24.08.2015 held appellant guilty under Section 392 of IPC and sentenced him as mentioned above. Other co-accused persons were acquitted.

4. In appeal, it is argued by the learned counsel for the appellant that all the prosecution witnesses are interested witnesses. There are lots of contradictions and omission occurred in their evidence. The identification of appellant and chain is not proved beyond doubt. Appellant was already shown to the complainant in police station prior to test identification parade, therefore, it has no value and on this account alone appellant cannot be held guilty. The trial Court has committed illegality in convicting the appellant.

5. Considering the rival submission of learned counsel for the parties and on perusal of record, it appears that it is not disputed that on the date of incident, the chain of complainant Smt. Ranjana Sharma (PW-1) was snatched and looted by one unidentified person. The prosecution case against the appellant rests upon the test identification parade in which the complainant has identified the appellant and also the recovery of chain of complainant at the instance of appellant.

6. Investigation Officer C.P. Dwivedi (PW-5) deposed that on information, he went to Durga Nagar alongwith police staff on 03.06.2011 and found appellant alongwith other co-accused in a hut of Kamal Balai. On interrogation, it was revealed that the appellant had committed various offences of loot and robbery. The police has recorded his memorandum Ex.P-6 and recovered 54 ornaments alongwith the golden chain of complainant concealed under the bricks from the place inside the hut of Kamal Balai. A seizure memo Ex.P-7 was prepared. Thereafter, the proceedings for identification of chain and appellant were conducted by Tahsildar Varun Awasthi (PW-2).

7. Tahsildar Varun Awasthi (PW-2) in his statement deposed that on 09.07.2011 he has arranged the test identification parade of appellant in central jail Bhopal. The appellant was duly identified by complainant Smt. Ranjana Sharma. He has prepared test identification memo Ex.P-3.

8. The trial Court on relying upon the identification of appellant by the complainant and recovery of the chain from the possession of appellant on his memorandum, found him guilty of aforesaid crime. In this regard, the complainant Smt. Ranjana Sharma (PW-1) in her examination-in-chief clearly stated that she does not identify the appellant. In para 2 of her statement, she deposed that at present she is not able to state, out of three accused persons standing in the Court room whom she had identified in jail. In cross-examination also, she admits that at the time of incident, all of a sudden, a person on motorcycle came near to her, snatched her chain and ran away, she could not see him properly. Thus, the statement of complainant shows that she is not able to identify the person who has snatched her chain. At the time of her statement, she could not identify the appellant. Therefore, keeping in view above statements of complainant who has been declared hostile by the prosecution, the identification of present appellant becomes doubtful.

9. Hon'ble Apex Court in the case of Malkhansingh and others Vs. State of Madhya Pradesh, 2003 (4) Supreme 394: (AIR 2003 SC 2669) in para 7 reiterated that:

"7. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. 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. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

10. Thus, it is clear that the statement of the complainant made during trial in the Court regarding identification of the appellant is substantive evidence. The

identification at the time of test identification parade conducted by Tahsildar is the evidence only corroborative in nature. Hon"ble Apex Court has categorically observed that test identification parade do not constitute substantive evidence and these parades are essentially governed by Section 162 of Cr.P.C.

11. In the present case, when complainant is not able to identify the appellant in the Court room, then the identification of appellant during test identification parade also becomes doubtful because it is not a substantive evidence. The trial Court has committed illegality by relying upon the evidence of test identification parade.

12. Secondly, the identification of golden chain is also not proved. Prosecution has not examined the person who has conducted the test identification of chain. The chain is not produced in evidence. Therefore, this fact is also not proved beyond reasonable doubt that the complainant's chain was recovered at the instance of appellant. The findings of the trial Court in this regard is erroneous and unsustainable.

13. Keeping in view the aforesaid discussion, it is not found proved that the appellant has snatched the golden chain of the complainant and same was recovered on his memorandum. The trial Court has wrongly held appellant guilty in aforesaid offence. The offence is not found proved beyond reasonable doubt.

14. Thus, the appeal is allowed. The impugned judgment and sentence passed by the trial Court is set aside and appellant is acquitted from the charge of Section 392 of IPC. Appellant shall be released from jail forthwith if not required in any offence.

15. The golden chain be returned to the complainant.