

(2015) 10 CAL CK 0059
In the Calcutta High Court
Case No : CRA No. 244 of 2012

Shailendra Singh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 395, 397, 412

Citation : (2015) 10 CAL CK 0059

Hon'ble Judges : Ashim Kumar Roy and Malay Marut Banerjee, JJ.

Bench : Division Bench

Advocate : Debasish Roy and Vimal Kumar Shahi, for the Appellant; Nagive Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Malay Marut Banerjee, J.—All the three (3) appellants here were found guilty of offences punishable Under Section 120B and Section 395 read with Section 397 , Indian Penal Code as also under Section 412 of the Indian Penal Code by the Additional Sessions Judge, First Court, Paschim Medinipure in Sessions Trial No. XXXIII(A)/May/2006. They were sentenced to suffer imprisonment for life on their conviction Under Section 120B and Section 395 read with Section 397 , Indian Penal Code and further sentenced to imprisonment for life on their conviction under Section 412 of Indian Penal Code.

2. Before advertng to the arguments of the Learned Counsels for the appellants and of the State it would be appropriate to have a glance at the prosecution case as propounded in the First Information Report (Exhibit-I). The formal F.I.R. was drawn up on the basis of a written complaint lodged by Subhas Nath (PW-1) at Jhargram G.R.P.S. According to the F.I.R., he is the state manager of Writers" Safe-guard Private Limited, a company engaged in carrying cash and valuable and management of ATMs of different Banks. It is in the written complaint that on 8th July, 2005 on prior intimation of H.D.F.C. Bank a Cash-in-transit (C.I.T.) from Kolkata to Jamshedpur H.D.F.C Branch was organised. One Ajoy Debnath

was detailed to be the In-charge of the C.I.T. Rupees ninety nine lakhs (Rs. 99,00000/-) was handed over to him. He boarded Gitanjali Express with two (2) Escorts at Howrah Station for going over to Jamshedpur but in course of the journey between 4.20 p.m. to 4.35 p.m. one Mr. D. Mondal Senior Co-ordinator informed him that a call has come from a Mobile that the cash has been looted near Kharagpur Station. He, therefore, lodged the F.I.R.

3. As already indicated hereinabove the appellants having suffered judgment and order of conviction and sentence have preferred this appeal.

4. It would be our endeavour to see whether the judgment and sentence impugned against can be sustained.

5. The Learned Advocate appearing for the appellants argued that as transpires from the evidence of PW-1 Subhas Nath he reached Jhargram after hearing looting of the cash but the fact remains that the persons concerned namely PW-2, 3, and 4 had already reported the incident at Jhargram Police Station. The prosecution never cared for bringing any Diary entry as recorded on the basis of information given by PW-2, 3 and 4 at the Police Station and a distorted First Information Report was lodged by PW-1. It was argued that the prosecution failed to explain the delay in lodging the F.I.R. not less than five hours after the alleged incident despite the fact that the victims of the dacoity namely PW-2, 3 and 4 who were actually carrying the cash had reached Jhargram P.S. much before arrival of PW-1 and according to P.W.-4, Ajoy Debnath (P.W.-2) informed about the occurrence at Jhargram G.R.P.S.

6. It was argued by the Learned Advocate for the appellants that the investigation of the case was ultimately taken over by C.I.D. and the C.I.D. Officials made all the attempts to implant evidence by way of making purported seizure of the alleged suit-case/attache in which the cash was being carried, the plastic strips and paper labels/straps with which the bundles of the currency notes were tied. It was argued that no amount of the looted money was seized from the possession of any of the appellants and prosecution wants the Court to believe that even after two (2) years of the incident the perpetrators of the offence, in the instant case the present appellants as alleged by the prosecution, would keep the said attache or the plastic strips and paper labels put on the bundles of the currency notes, only to be caught by Police in future. It was argued that by no stretch of imagination this can be believed as normal human conduct would be and more particularly in case of perpetrators of an offence, to destroy the evidence but for reasons best known to the Investigating Agency it claims that seizure of such incriminating materials was made.

7. The Learned Advocate further argued that the allegedly seized suit-case/ attache in which the cash was being carried and produced in Court does not match with the description of the said attache as given by the witnesses examined on behalf of the prosecution.

8. The Learned Advocate for the appellants has argued that PW-3 in his evidence

has stated about brandishing of pistol by the miscreants but there is nothing like that in the evidence of P.W.-2. However, on close scrutiny we find that such argument is not correct. However, for better appreciation of the arguments we think that it would not be incongruous to quote the relevant portion of the evidence of P.W.-4:-

"After Kharagpur Station that Gitanjali Express started there-from. At about 15/20 minutes thereafter four (4) persons came towards us inside that train compartment and they removed the curtain of our coupe. Then one of those persons showed one pistol towards me and another person showed pistol to the said Ajoy Debnath and that person asked the key from him saying "Chabi do chabi do" and on refusal that person slapped on the cheek of the Ajoy Debnath and snatched the key of that attache-case from Ajoy Debnath. Then those four (4) miscreants took away that attache-case by cutting its chain and fled away from that Train after pulling the alarm chain. Due to pulling of alarm chain the Train stopped at a place. Then I along with Ajoy Debnath and Rabi Kumar Gond got down from the compartment at that place and from that place we find that four (4) miscreants were going towards the nearby path where a Tata Sumo vehicle was standing. We found that those four (4) miscreants fled by the Tata Sumo vehicle along with the attache-case containing that cash money".

9. The Learned Advocate for the appellants contended that appellant Satyendra Singh was neither placed in the T.I. Parade nor was he ever identified by any of the witnesses in course of the trial but even then the learned court below was pleased to find him guilty of committing dacoity. The Learned Advocate argued that there is no iota of incriminating evidence against appellant Satyendra Singh and the charges under Section 120B /395 /397 as also the charge under Section 412 Indian Penal Code against him, remains far from proved. It was argued that there is no explanation from the side of the prosecution as to why appellant Satyendra Singh was not placed in the T.I. Parade.

10. The Learned Advocate went on to argue that appellant Shailendra Singh and Dhananjay Singh were identified by P.W.-2 (Ajoy Debnath), P.W.-3 (Rabi Kumar Gond) and P.W.-4 (Sunil Singh) because their photographs had been shown before hand to them by the Investigating Officer.

11. The Learned Advocate for the appellants submitted that evidence of P.W.-5 is not so material but P.W.-6 (Bimal Kumar Rout) was posted as Station Manager at Jhargram on the day of the incident and according to him the coach attendant of the Train handed over a memo to the O.C., R.P.F. about the occurrence but the prosecution did not bring any such memo during the trial. It was submitted that P.W.-7 (Ganesh Das) and P.W.-8 (Umesh Shaw) and P.W.-9 (Dibyendu Hazra) are witnesses of seizure. The factum of seizure is not only doubtful but highly improbable because miscreants going to the extent of committing robbery in a Train are no fool to preserve traces of incriminating evidence instead of destroying the same.

12. Inviting our attention to Exhibit-4 which is the certified copy of a letter dated 08.07.2005 issued by Writers' Safe-guard Private Limited, the Learned Advocate argued that P.W.-10 (Tapan Kumar Bakshi), a Senior Manager of H.D.F.C. Bank, currency chest at Mangalam Building, Kolkata in his cross-examination clearly stated that the impression of rubber seal shows the date of payment in Exhibit-34 as "8th Jun, 2005". The Learned Advocate argued that the Investigating Agency made attempt to create evidence and that is why such discrepancy is found in Exhibit-34. We are not inclined to accept such argument because on the left side top margin the date is clearly mentioned as 08-07-05 and more over, there is mention of this date 08-07-05 in the first line of the letter.

13. Of perusal of the evidence of P.W.-10 Tapan Kumar Bakshi, we find that he is a Senior Manager of H.D.F.C. Bank, Currency Chest at Mangalam Building, Kolkata - 700001 and on 08.07.05 he was posted as Manager at the same Branch. He certified a true copy of a letter dated 08.07.05 issued by Writers' Safe-guard Pvt. Ltd. to H.D.F.C. Bank, Mangalam Building (Exhibit-35). According to him, the letter was brought to their Office by Ajoy Debnath (P.W.-2) on 08.07.05 and on that day at 12.30 noon cash of Rupees ninety nine lakhs (Rs. 99,00,000/-) was handed over to P.W.-2 by H.D.F.C. Bank on acknowledgement receipt duly signed by P.W.-2 in the remittance voucher. In this connection, the evidence of P.W.-12 - Samir Kumar Saha another Senior Manager, H.D.F.C. Bank, Currency Chest, Mangalam Building may also be referred to. From his evidence it is found that on 04.07.05 they received a request from H.D.F.C. Bank, Jamshedpur Branch for sending currency notes of Rupees ninety nine lakhs (Rs. 99,00,000/-) and after receipt of such a request preparation was made in the Office of the H.D.F.C. Bank, Currency Chest, Mangalam Building, Kolkata for sending the said amount to H.D.F.C. Bank to the Jamshedpur Branch. He has stated that the currency notes were covered with paper slips i.e., note slips of H.D.F.C. Bank, Currency Chest, Mangalam Building, Kolkata and he put his initials on those paper labels. He identified those paper labels and proved his initial signatures in Exhibits-5 to 12. His signatures were marked as Exhibits-40 to 50. He also identified four (4) plastic strips (Mat. Exhibit-VI collectively). He also corroborated P.W.-10 in stating that on 08.07.05 at about 12.00/12.30 p.m. cash of Rupees ninety nine lakhs (Rs. 99,00,000/-) was handed over to P.W.-2 for the purpose of carrying the same to H.D.F.C. Bank, Jamshedpur Branch.

14. Inviting our attention to the cross-examination of P.W.-15 - Rajesh Rajpal, the Learned Advocate for the appellants argued that on 08.07.05 he was Assistant Manager at H.D.F.C. Bank, Currency Chest, Mangalam Building, Kolkata but according to him there is no signature of one Samir Kumar Saha one of the Senior Managers of H.D.F.C. Bank, Currency Chest, Mangalam Building in Exhibit-35. We do not consider that this argument has much force.

15. The Learned Advocate for the appellants argued that although the prosecution examined one Subrata Banerjee (P.W.-16) and one Shikandar Singh (P.W.-17) to establish that four (4) tickets against P.N.R. No. 6149454528 were

issued but the prosecution failed to prove that such tickets were issued to the appellants or any of them travelled in the Train on the day of the incident using such tickets. Such argument of the Learned Advocate is also not acceptable because possibility of purchasing tickets in the names of somebody else cannot be ruled out.

16. Inviting our attention to the evidence of P.W.-23 - Timir Kanti Acharya, Learned Advocate for the appellants argued that even if testimony of this P.W.-23 is taken for granted for a moment, it would be clear that the place of seizure of the allegedly stolen suit-case/attache containing five (5) paper labels and four (4) plastic strips was not the house of the appellant Dhananjay Singh but his elder brother was the person who opened the door of the house.

17. The Learned Advocate for the appellants also argued that appellants Satyendra Singh and Shailendra Singh are the two (2) brothers and appellant Dhananjay Singh is their cousin, photograph of appellant Styendra and Shailendra was seized by the Investigating Officer on 20.08.05 and since that photograph was shown before-hand to P.Ws.-2, 3 and 4 they identified appellant Shailendra Singh in the T.I. Parade at the instance of the Investigating Officer. It was argued that there is no iota of evidence to establish the charge of conspiracy to commit the dacoity by the appellants. It was also argued that P.W.-2 was being escorted by P.Ws.-3 & 4 and P.W.-4 Sunil Singh had a gun with him but there is no explanation from the side of the prosecution as to why P.W.-4 did not open fire when the miscreants got down from the Train and went towards the nearby road to board a Tata Sumo car allegedly parked there. The Learned Advocate argued that it can be understood that fire could not be opened by P.W.-4 inside the Train Compartment but when it is in the evidence on record that they also got down from the Train when it was stopped by reason of pulling of chain and found the miscreants going away with the stolen suit-case it was only expected that the gunman ought to have opened fire.

18. The Learned Advocate for the appellants further argued that P.W.-10 Tapan Kumar Bakshi in his cross-examination admitted that the entire process from getting E-mail requisition till handing over of the cash amount to Ajoy Debnath (P.W.-2) was Video recorded but the C.D. does not show any serial number of the particular box/attache by which the cash amount of Rupees ninety nine lakhs (Rs. 99,00000/-) was handed over to P.W.-2.

19. The Learned Counsel appearing for the State argued that P.Ws. 2, 3 and 4 are the most important and vital witnesses in the case because they were carrying the cash and from their possession it was looted and there is no material contradictions in their evidence so far the commission of the dacoity is concerned, but, there could be minor discrepancies here and there in the evidence on record but since there does not appear any contradiction in the evidence on record, the findings of guilt arrived at by the Learned Trial Court is the most logical outcome of the analysis of the entire evidence and materials on record.

20. The Learned State Counsel argued that not only opening fire by P.W.-4 inside the compartment was next to impossible but shooting down any of the miscreants while they were fleeing away was also not prudent and possible because it has come in the evidence on record that the fateful day was the day of "Rathayatra" and many people were going along the nearby road where the Tata Sumo was parked. It was argued that the Learned Court below quite rightly came to the findings that apart from the four (4) miscreants who looted away the suitcase/attache containing the cash by cutting the chain with which it was tied but there were some more persons like the driver of the Tata Sumo. It was argued that the prosecution was able during the trial to adduce sufficient cogent, consistent and credible evidence to prove the charges against the appellants. The Learned Counsel further argued that the daring incident that took place could not have been committed by the appellants without pre-concert with other miscreants and the perpetration of the dacoity itself shows and establishes that the miscreants had entered into a criminal conspiracy to loot away the money. It was argued that the incident is not a simple theft but its commission clearly shows that the miscreants had taken prior information about movement of such currency notes by the material witnesses concerned or other employees of the concerned agency. It was argued that the four (4) miscreants boarded the Train, followed P.Ws. 2, 3 and 4, watched them and pursuant to a well orchestrated and chalked out plan before hand had arranged for parking the Tata Sumo car for their escape with the booty and selected the place and time for committing the crime and there can be no manner of doubt in holding that actually five (5) or even more than five (5) persons were behind the commission of the dacoity and there may not be any confusion that there was any mistake or error in framing charges under Sections 395 /397 Indian Penal Code in the case. We find that this argument has much force and substance and, therefore, acceptable.

21. The learned State Counsel argued that the C.C. T.V. Footage did not cover the description of the box but only the handing over the box and that is why the number of the box/suitcase/attache was not taken.

22. The Learned State Counsel further argued that the Learned Trial Court clearly held that pursuant to the statement of the convict/appellants there was recovery of the stolen suitcase/attache containing some paper slips and plastic strips. It was argued that although appellant Satyendra Singh was not placed in the T.I. Parade but stolen article namely, some paper slips could be recovered, pursuant to statement made by him whilst he was in police custody. It was argued that P.W. 9 Dibyendu Hazra in course of giving evidence identified appellant Satyendra Singh in Court and the argument from the side of the appellants that appellant Satyendra Singh was not identified by any of the witnesses does not hold good.

23. We have already discussed hereinabove the relevant portion of the evidence, of P.W.10 Tapan Kumar Bakshi regarding handing over of Rupees ninety nine lakhs (Rs. 99,00000/-) to P.W.-2 from their office, i.e., H.D.F.C. Bank, Currency Chest at Mangalam Building, Kolkata on 8.7.05 at 12.30 noon. This fact finds full

corroboration from P.W.-12 Samir Kumar Saha and P.W.-15 Rajesh Rajpal.

24. We find that P.W.-1 Subhas Nath, who on 8.7.05 was posted as State Manager at Writers' Safe-guard Pvt. Ltd., Kolkata, the agency engaged in carrying cash and valuables and Management of ATMs of different Banks, in his evidence has clearly stated that on 8.7.05 this Writers' Safeguard Pvt. Ltd. was entrusted to carry cash of H.D.F.C. Currency Chest at Mangalam Building, Kolkata to Jamshedpur. It is in his evidence that on 8.7.05 P.W.-2 along with P.Ws. 3 and 4 were carrying the cash from H.D.F.C. Bank Currency Chest, Mangalam Building, Kolkata to Jamshedpur. On careful scrutiny, we do not find anything to disbelieve his testimony. In cross-examination a suggestion was put to him that Ajoy Debnath (P.W.-2), Sunil Singh (P.W.-4) and Rabi Kumar Gond (P.W.-3) in collusion with each other misappropriated the cash money. Nothing was put to him that they were not carrying the cash.

25. We have already to a little extent, however, referred to the evidence of P.W.-4 Sunil Singh. In this context, once again going through the evidence of P.Ws. 2 & 3 we find that in narrating the incident while deposing in Court the aforesaid witnesses testified about the occurrence consistently with each other and we do not find any material contradictions in their evidence. However, to avoid unnecessary repetition we refrain from quoting the evidence of P.Ws. 2 & 3 but suffice it to say that they stood the test of cross-examination and credibility of these three (3) witnesses remain unshaken.

26. It is, therefore, found that by examining P.Ws. 10, 12 and 1 the prosecution was able to prove that Rupees ninety nine lakhs (Rs. 99,00,000/-) was being carried in a suitcase/attache by P.Ws. 2, 3 & 4 from H.D.F.C. Bank, Currency Chest at Mangalam Building, Kolkata to Jamshedpur and as testified by P.Ws. 2, 3 and 4 they were taking the money in the suit-case/attache on 08.07.2005 boarding the Up Gitanjali Express from Howrah. From the evidence of P.Ws. 2, 3 and 4 it has been established that the said suitcase containing the cash was looted by some miscreants. We do not find any reason whatsoever to disbelieve the testimony of P.Ws. 2, 3 & 4 and we concur with the findings of the Learned Trial Court that the money was looted away by some miscreants. We also concur with the findings of the Learned Trial Court that apart from four (4) miscreants as deposed to by P.Ws. 2, 3 & 4 there were other persons involved in the commission of the dacoity and we are in agreement with the Learned Trial Court that the prosecution has been able to prove its case of conspiracy to commit the dacoity and the commission of the dacoity itself.

27. It remains to be seen whether the prosecution has been able to prove its case that the appellants were the perpetrators of the dacoity. In other words, it is incumbent upon us to find whether the prosecution has been able to bring home the charges under Sections 120B /395 /397 Indian Penal Code and the charge under Section 412 Indian Penal Code against the appellants beyond all reasonable doubt.

28. Insofar as identification of appellants Shailendra Singh and Dhananjoy Singh is concerned we find that P.W.-2 Ajoy Debnath in his evidence claimed to have observed four (4) miscreants clearly and he identified accused Shailendra Singh and Dhananjoy Singh in Court. It is also pertinent to mention that this witness had also identified both the appellants Shailendra Singh and Dhananjoy Singh in the T.I. Parade. We further find that P.W.-3 Rabi Kumar Gond in course of giving evidence identified appellants Shailendra Singh and Dhananjoy Singh and in his evidence has claimed to have seen both of them at the time of occurrence inside the Train Compartment alongwith other miscreants. P.W.-4 Sunil Singh identified appellant Shailendra Singh during the trial. It is also in his evidence that in the T.I. Parade he had also identified appellant Shailendra Singh.

29. Now, coming to the question of identification of appellant Satyendra Singh we find that he was not placed in the T.I. Parade and the material witnesses namely P.Ws. 2, 3 & 4 could not identify him in Court during the trial. The Apex Court in *Visveswaran Vs. State Rep. by S.D.M.*, held:-

"The Identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a times, crimes are committed under cover of darkness when none is able to identify the accused. The commission of crime can be proved also by circumstantial evidence."

30. Having regard to such proposition of law we may well refer to the evidence of P.W.-9 Dibyendu Hazra who on 03.06.2007 accompanied P.W.-7 Parthanath Majumder, the Investigating Officer to a "Bustee" at 20, Coal Berth Road, Calcutta and has stated in his evidence that one Satyendra Singh was with them. He deposed about recovery of a box from inside the room of a quarter taken out by Satyendra Singh and about the box containing three (3) - labels of currency note in squeezed condition and one Bank Pass Book of Central Bank of India. He proved his signature in the seizure list and also identified appellant Satyendra Singh. In this connection we may also refer to the evidence of P.W.-37 Partha Nath Majumder, the Investigating Officer of the case who in his evidence has stated about recovery of a box as led to its discovery by accused/appellant Satyendra Singh and pursuant to statement made by him on 03.06.07. It is also in his evidence that this appellant Satyendra Singh also put his signatures on the articles mentioned in the seizure list. We find from the evidence of P.W.-2 Ajoy Debnath that the currency notes were covered with paper labels and he identified eight (8) paper labels of H.D.F.C. Bank (Exhibit-5 to 12). He also identified four (4) number of plastic strips (marked Mat Exhibit-VI) collectively. So the prosecution has been able to establish the seizure of these paper labels at the instance of appellant Satyendra Singh and that the currency that was being carried was covered with those paper labels.

31. Coming to the recovery of the stolen suitcase at the instance of appellant Shailendra Singh and Dhananjoy Singh we find that P.W.-7 Ganesh Das and P.W.-8 Umesh Show lent corroboration to the prosecution case as deposed to by

the Investigating Officer of the case. We find that P.W.-2 Ajoy Debnath identified the said safari suitcase/attache (Mat Exhibit-VII). P.W.-3 Rabi Kumar Gond and P.W.-4 Sunil Singh also identified the said safari attache (Mat Exhibit-VII).

32. So from the discussion made hereinabove it is found that five (5) or more than five (5) persons hatched up a conspiracy to commit dacoity and through a well chalked out plan committed the theft of cash of Rupees ninety nine lakhs (Rs. 99,00000/-) being carried by P.Ws. 2, 3 & 4 in a safari suitcase (Mat Exhibit-VII) from their possession while they were travelling to Jamshedpur from Howrah Station by Up Gitanjali Express on the date of the occurrence.

33. We have already stated hereinabove the circumstances which the prosecution was able to prove before the Learned Trial Court i.e., the handing over of the cash in the stolen suitcase to P.W.-2, taking the suitcase containing the money by P.W.-2 accompanied by P.Ws. 3 & 4 going over to Jamshedpur by availing themselves of the Up Gitanjali Express on the date of the occurrence, the fact that dacoity was committed in respect of the said suitcase containing the cash of Rupees ninety nine lakhs (Rs. 99,00000/-), the escape of the miscreants by getting on to the Tata Sumo which was standing beside the Road and we have also discussed the recovery of the stolen suitcase and the paper labels and plastic strips with which the bundles of the currency notes were tied with and about such recovery at the instance of the present appellants/convicts.

34. We do not find any ground to disbelieve the witnesses including the witnesses of seizure and we find and hold that the Learned Trial Court committed no error in finding the guilt of the appellants in respect of the charges framed against them under Sections 120B /395 /397 /412 Indian Penal Code.

35. In the result, we do not find any ground whatsoever to interfere with the findings arrived at by the Ld. Trial Court. The appeal is devoid of any merit and is liable to be dismissed.

36. Hence, the appeal is dismissed. The judgment and order of conviction and sentence passed by the Ld. Trial Court are affirmed.

37. Office is directed to send down the LCR together with the copy of the judgment to the court below at once.

38. Urgent Xerox certified copy of this order be given to parties, if applied for, as early as possible.

Ashim Kumar Roy, J.

I agree.