
(2003) 12 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 47-DBA of 1991 And Criminal Appeal No. 223-SB of 1990

U.T.Chandigarh

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Citation : (2004) 2 RCR(Criminal) 799

Hon'ble Judges : H.S.Bedi, J

Advocate : None for the Appellant, Mr. Arvind Sandhu, Advocate., Advocates for appearing Parties

Judgement

H.S. Bedi, J.

1. These appeals are directed against the judgment of the Sessions Judge, Chandigarh dated 5.6.1990, whereby out of the two accused, Lachhmi Narain has been acquitted, whereas Mohan Singh convicted under Section 392 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/ and in default of payment thereof to further undergo rigorous imprisonment for three months.

2. The prosecution case is that Krishan Kumar complainant (PW2), who was working as Tailor in village Maulijagran, in the Union Territory, Chandigarh left for Mani Majra at about 2.00 P.M. on 21.8.1989 for purchasing some articles. He was, however, waylaid by two boys. One of the boys took out a knife from his dub and asked him to deliver whatever articles he was carrying, whereas the other boy caught hold of him by his arm and removed his wrist watch, purse and other articles. He identified the boy, who had removed the wrist watch as being of fair complexion; moderately built, 5'8" in height of 25/26 years if age, whereas the other body was about 22/23 years of age, stout and whitish in complexion. He also noticed that one of the boys had got inscribed the letters MLF on his arm and the boy informed Krishan Kumar that these letters represented its bearer as being a Member of the Liberation Force. After the

occurrence, Krishan Kumar returned to his Village and then went to the shop of Dr. Kartar Singh and narrated the incident to him and thereafter accompanied by the said doctor left for the police station to lodge the report, but while they were near the quarters of the Housing Board they met Sub Inspector Labh Singh (PW4), who recorded Krishan Kumar's statement (Exh. PB) and on its basis the formal FIR, Exh.PB/1, was registered at the police station. On 25.8.1989, SI Labh Singh was on patrolling in connection with the investigation of the case, when he received secret information that the accused were sitting at the bus stop near the grain market. He reached that place and arrested the accused. They were produced in Court the next day but they refused to join the identification parade, on which their statements were recorded by the Magistrate. Mohan Lal accused was interrogated in the presence of Jagar Singh (PW3), Chowkidar of the village and on his statement, a knife and a purse were recovered from near the wall of mosque on the road whereas on Lachhmi Narain's interrogation, a wrist watch was recovered from his house. On the completion of the investigation, the accused were charged for an offence punishable under Sections 392 and 397 of the Indian Penal Code and as they pleaded not guilty, were brought to trial.

3. The prosecution in support of its case relied primarily on the evidence of PW2 Krishan Kumar, the complainant; PW3 Jagar Singh, Chowkidar of village Darwa, who deposed about the interrogation of the accused and the recovery made at their instance; and Sub Inspector Labh Singh (PW4), the main investigating Officer.

4. The prosecution case was then put to the accused and their statements under Section 313 of the Code of Criminal Procedure recorded and they denied the allegations levelled against them.

5. The trial Court, on a consideration of the evidence, found that the case against Mohan Lal stood proved and he was accordingly convicted and sentenced as already mentioned above, whereas Lachhmi Narain was given the benefit of doubt and acquitted.

6. Two appeals have been filed against the judgement of the Sessions Judge, one by accused Mohan Lal, challenging his conviction and the other by the U.T. Chandigarh, impugning the acquittal of Lachhmi Narain. Both appeals are being disposed off by this judgment.

7. I have gone through the record the judgment of the trial Court.

8. It is clear from the record that the incident is said to have happened at about 2.00 P.M. on 21.8.1989, whereas the FIR is stated to have been recorded at 6.35 P.M. in Police Station, Mani Majra, at a distance of two K.Ms. from the place of incident. It appears, therefore, to me that there was some delay in the lodging of the FIR. The prosecution has, however, tried to explain the delay by arguing that Krishan Kumar after being robbed had gone to the clinic of Dr. Kartar Singh to take some medicine and had thereafter (accompanied by the doctor) gone to the

police station to lodge the report. To my mind, the explanation smacks of a clear improbability as it cannot be believed that after having been robbed, Krishan Kumar instead of going to the police station, would have chosen to call on the doctor. This story could also have some credence in case Dr. Kartar Singh had appeared as a prosecution witness. Admittedly he has not done so.

9. It is in this background that the identification of the accused becomes important. It is the prosecution case that the accused were not known to Krishan Kumar PW. The trial Court has observed that as the accused had refused to join the identification parade before the Magistrate, it was a circumstance to be taken against them. The accused have, however, stated that they had already been shown to Krishan Kumar prior to the proposed identification parade. The trial Court has also chosen to rely on the recoveries made from the two accused. While the evidence of Jagar Singh (PW 3), a Chowkidar of village Darwa with regard to the recovery made from Mohan Lal has been accepted, his evidence with regard to the recovery made from Lachhmi Narain has been discarded. This evidence too is, therefore, indeterminate. Admittedly, the police did not make any attempt to join any other person at the time of the recoveries. To my mind, therefore, the involvement of Mohan Lal appellant is also clearly suspect. Criminal Appeal No. 223SB of 1990 filed by Mohan Lal is accordingly allowed, whereas Criminal Appeal No. 47DBA of 1991 filed by the U.T. Chandigarh is dismissed.