[2025] 2 S.C.R. 363 : 2025 INSC 145

Wahid
v.
State Govt. of NCT of Delhi

(Criminal Appeal No. 201 of 2020)

04 February 2025

[Pamidighantam Sri Narasimha and Manoj Misra,* JJ.]

Issue for Consideration

The appellants herein have preferred appeal against their conviction. Appellant-W was convicted by the Trial Court for offence punishable u/s.392 r/w. s.397 IPC and appellant-A was convicted u/s.392 r/w. s.397 IPC and s.25(1) of the Arms Act. Their appeals were dismissed by the impugned order of the High Court.

Headnotes†

Penal Code, 1860 – ss.392, 397, 411 – Arms Act, 1959 – s.25 – Prosecution case was that complainant (PW-1) while travelling along with other passengers in a Gramin Sewa (mini bus) got robbed by four persons armed with weapons – FIR was registered – Appellant-W was convicted by the Trial Court for offence punishable u/s.392 r/w. s.397 IPC, but acquitted u/s.411 IPC – Appellant-A was convicted and sentenced u/s. 392 r/w. s.397 IPC and s.25(1) of the Arms Act – Both the appellants filed appeal before the High Court which were dismissed – Correctness:

Held: Having perused the materials on record, prosecution has succeeded in establishing that on the night of 3.12.2011 the travellers of Gramin Sewa were robbed by four persons – However, mere proof of robbery is not sufficient to hold that the accused persons who were put to trial were the ones who committed the offence – In the instant case, neither the accused persons were named nor they were known either to the complainant or the witnesses from before – Prosecution case is rather too simple, that is, two days later, on 5.12.2011, PW-1 himself noticed the accused persons standing near DTC Bus Depot; immediately thereafter he informed the police about their presence; the police went to the spot, arrested them, and, upon search of those persons, recovered

* Author

from them weapons including screw driver, as described in the FIR, used by the robbers to threaten the passengers – The aforesaid prosecution story of four accused persons, not belonging to one family, being spotted together at a public place (i.e., bus depot), that too near a police station, just two days after the incident, that too with weapons corresponding to the weapons held by the robbers mentioned in the FIR, appears too well-crafted to be real – More so, the arrest memorandums of the four accused which indicate that they were arrested post 10 pm on 5.12.2011 – This was quite an odd hour for any person to venture out on a winter night – Such a story appears improbable because PW-1, who is not a resident, and had suffered an act of robbery just two days before, in ordinary circumstances would not venture out so late in the night, just to hand over receipt regarding purchase of his robbed mobile – These circumstances make the prosecution story relating to the manner of arrest highly improbable – There is discrepancy regarding receiving information about the presence of accused persons at the bus depot from PW-1 – According to PW-10, information was given when the police party, which had already left the police station, met PW-1 at the red light – Whereas according to PW-13 the police team left the police station with the complainant (i.e., PW-1) and at bus depot, PW-1 pointed towards the accused persons – PW-1's statement-in-chief is also on similar terms as that of PW-13 – However, there is no disclosure in the testimony of any of the police witnesses that before leaving the police station, the information provided by PW-1 regarding spotting the accused was entered in any of the diaries maintained at the police station – From the statements of key witnesses, and on cumulative analysis of the circumstances, while taking into consideration the statements of accused-appellants recorded u/s. 313 of the CrPC that they were picked up from home and falsely implicated by the police, a serious doubt is cast on the manner in which the prosecution claims to have arrested the accused – Admittedly, no test identification parade was conducted and the statement of PW-1 was recorded in court on 28.05.2013, that is, after 16 months of the incident – In such circumstances, not much reliance can be placed on his statement – As far as dock identification is concerned, the remaining two eye witnesses identified the accused persons during their deposition in court in the year 2015, that is, after nearly 4 years of the incident – PW-6, resident of Aligarh, though stated that he identified the accused persons on 06.12.2011 while they were in the police lock-up, admitted that he went to

the police station without being summoned at 07:30 a.m – His statement does not inspire confidence – In the circumstance, when three eye witnesses stated that accused persons were not the ones who committed the crime and another one stated that it was too dark, therefore, he could not recognise, bearing in mind that the accused persons were not known to the eye witnesses from before, not much reliance can be placed on the dock identification – In such circumstances, and in absence of corroborative evidence of recovery of looted articles at the instance of or from the accused persons, in view of this Court, the appellants should have been given the benefit of doubt. [Paras 13, 15, 16, 18, 20, 22, 23, 24]

Code of Criminal Procedure, 1973 – When FIR is lodged against unknown persons:

Held: In cases where the FIR is lodged against unknown persons, and the persons made accused are not known to the witnesses, material collected during investigation plays an important role to determine whether there is a credible case against the accused – In such type of cases, the courts have to meticulously examine the evidence regarding (a) how the investigating agency derived clue about the involvement of the accused in the crime; (b) the manner in which the accused was arrested; and (c) the manner in which the accused was identified – Apart from above, discovery/ recovery of any looted article on the disclosure made by, or at the instance of, the accused, or from his possession, assumes importance to lend credence to the prosecution case. [Para 14]

Case Law Cited

Manoj and Others v. State of Madhya Pradesh **[2022] 9 SCR 452 : (2023) 2 SCC 353 – referred to.**

List of Acts

Penal Code, 1860; Arms Act, 1959; Code of Criminal Procedure, 1973.

List of Keywords

FIR; Robbery; FIR against unknown persons; Discovery of article; Recovery of article; Corroborative evidence; Dock identification; Test identification parade; Benefit of doubt.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 201 of 2020

From the Judgment and Order dated 15.11.2018 of the High Court of Delhi at New Delhi in CRLA No. 1015 of 2017

Appearances for Parties

Fuzail Ahmad Ayyubi, Ibad Mushtaq, Ms. Akanksha Rai, Ms. Gurneet Kaur, Praveen Chaturvedi, Praveen Chaturvedi, Ms. Jyoti Chaturvedi, Tarun Kumar, Advs. for the Appellant.

Chirag M. Shroff, Adv. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Manoj Misra, J.

1. These two appeals impugn a common judgment and order of the High Court of Delhi at New Delhi[1] dated 15.11.2018, *inter alia,* passed in Criminal Appeal Nos. 1015 of 2017 and 1132 of 2017, whereby the appeals of the appellants preferred against the judgment and order of the Additional Sessions Judge-04 (Shahdara), KKD Courts, Delhi (i.e., the Trial Court) dated 16.08.2017 passed in Sessions Case No. 78 of 2014 were dismissed.

2. The appellants along with two others were tried for offences punishable under Sections 392/397/411 of the Indian Penal Code, 1860[2] and Section 25 of the Arms Act, 1959[3] in connection with F.I.R. No. 512 of 2011 at PS Nand Nagri, Delhi.

3. Appellant Wahid was convicted by the Trial Court for offence punishable under Section 392 read with Section 397 IPC, but acquitted under Section 411 IPC. For his conviction under Section 392 read with Section 397 IPC, Wahid was sentenced to undergo

1 The High Court

2 IPC

3 Arms Act

rigorous imprisonment of seven years with fine of Rs. 5000/-, coupled with a default sentence of two years. Insofar as appellant Anshu is concerned, he was convicted and sentenced under Section 392 read with Section 397 IPC to seven years of rigorous imprisonment along with fine of Rs. 5,000/-, coupled with a default sentence of two years; besides that he was also convicted for offence punishable under Section 25(1) of the Arms Act and sentenced thereunder to three years rigorous imprisonment along with fine of Rs. 2,000/-, coupled with a default sentence of six months.

4. There were two other accused, namely, Narender and Arif, who were also tried and convicted but since they are not before us, and it is reported that they have already served the sentence awarded to them, we do not propose to deal with the merits of their conviction, though they had also separately preferred appeal before the High Court.

5. The appellants, Wahid and Anshu, had separately preferred appeal against their conviction before the High Court. Their appeals were dismissed by the impugned order.

6. Aggrieved by the dismissal of their appeals, the appellants have preferred these appeals.

PROSECUTION CASE

7. Before we proceed to notice the submissions made before us, it would be apposite to notice in brief the prosecution case.

8. The prosecution case bereft of unnecessary details is that while complainant (PW-1) was travelling along with four other passengers, driver and conductor in Gramin Sewa (a mini bus), at about 11:25 p.m., in the night of 03.12.2011, four persons boarded the vehicle near Gagan Cinema. Those four thereafter threatened the passengers with knives, screw driver and country-made pistol, robbed them of their mobile(s) and cash and deboarded the vehicle. The driver thereafter took the passengers/victims to nearby police (PCR). The police officer present there was apprised of the incident and later a formal first information report (FIR) was registered at Police Station, Nand Nagri, Delhi as FIR No. 512/2011.

9. The investigation of the case was carried out by PW-13 who, allegedly, on the basis of information provided by the complainant (PW-1), effected the arrest of all four accused on 05.12.2011 from

near DTC Bus Depot at Nand Nagri. According to the prosecution, at the time of arrest, Narender *alias* Bhola (non-appellant) had a knife, Anshu (appellant in criminal appeal no. 202/2020) had a country-made pistol, Arif (non-appellant) had a button operated knife and Wahid (appellant in criminal appeal no. 201/2020) had a screw driver. Besides that, they had some cash. On 6.12.2011, according to the prosecution, looted mobile(s) were recovered separately at the instance of accused Narender and Arif i.e., non-appellants.

10. We have heard learned counsel for the parties and have perused the materials on record.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

11. The learned counsel for the appellants submitted that the FIR named none of the accused persons; the incident occurred in the darkness of night; the accused and the witnesses were not known to each other; the arrest of four accused, who were not related to each other, from one place and at one time, based on identification by PW-1 is highly doubtful; no test identification parade was conducted by the investigating agency to test whether the other passengers could recognise them; no looted articles were recovered from any of the accused; even recovery of knives, screw driver and country-made pistol is rendered doubtful by the statement of PW-1 to the effect that he was made to sign on blank papers; PW-2, PW-3 and PW-12, who were also travelling in the same Gramin Sewa, specifically stated that the accused were not those who committed the robbery; PW-14, who was also travelling in that Gramin Sewa stated that it was dark and, therefore, he is unable to recognise the robbers; and, besides above, there are material contradictions in the statement of witnesses who were allegedly travelling in that Gramin Sewa. In these circumstances, benefit of doubt ought to have been extended to the accused persons.

SUBMISSIONS ON BEHALF OF THE STATE

12. Per contra, the learned counsel for the State submitted that even if few witnesses have not supported the prosecution case, conviction can be sustained on the basis of testimony of other witnesses who had no motive to falsely implicate the accused. The testimony of PW-1,

PW-5 and PW-6 is reliable and sufficient to hold the accused guilty. In these circumstances, once the courts below, after appreciating the evidence, have held the accused appellants guilty, no case is made out to interfere with the findings returned by the courts below in exercise of power under Article 136 of the Constitution of India.

ANALYSIS

13. Having perused the materials on record, we find that prosecution has succeeded in establishing that on the night of 3.12.2011 the travellers of Gramin Sewa were robbed by four persons, who entered and exited the vehicle together after looting the travellers of their belongings such as cash and mobile phones, under threat of knife, country made pistol and screw driver. In respect of the above allegations, there is no discrepancy in the FIR and the eye witnesses (i.e., travellers, conductor and driver of Gramin Sewa) account. Moreover, the FIR of the incident has been lodged at the first opportunity. However, mere proof of robbery is not sufficient to hold that the accused persons who were put to trial were the ones who committed the offence.

14. In cases where the FIR is lodged against unknown persons, and the persons made accused are not known to the witnesses, material collected during investigation plays an important role to determine whether there is a credible case against the accused. In such type of cases, the courts have to meticulously examine the evidence regarding (a) how the investigating agency derived clue about the involvement of the accused in the crime; (b) the manner in which the accused was arrested; and (c) the manner in which the accused was identified. Apart from above, discovery/ recovery of any looted article on the disclosure made by, or at the instance of, the accused, or from his possession, assumes importance to lend credence to the prosecution case.

Manner in which accused persons were arrested and recovery effected appears doubtful

15. In the instant case, neither the accused persons were named nor they were known either to the complainant or the witnesses from before. Prosecution case is rather too simple, that is, two days later, on 5.12.2011, PW-1 himself noticed the accused persons standing

near DTC Bus Depot at Nand Nagri; immediately thereafter he informed the police about their presence; the police went to the spot, arrested them, and, upon search of those persons, recovered from them weapons including screw driver, as described in the FIR, used by the robbers to threaten the passengers.

16. The aforesaid prosecution story of four accused persons, not belonging to one family, being spotted together at a public place (i.e., bus depot), that too near a police station, just two days after the incident, that too with weapons corresponding to the weapons held by the robbers mentioned in the FIR, appears too well-crafted to be real. More so, when we consider it in conjunction with the arrest memorandums of the four accused which indicate that they were arrested post 10 pm on 5.12.2011. This is quite an odd hour for any person to venture out on a winter night. PW-1, who is a witness to the arrest memorandums, in his statement- in- chief said that while he was going to the police station to handover mobile purchase receipt, he spotted the accused persons. Such a story appears improbable because PW-1, who is not a resident of Nand Nagri, and had suffered an act of robbery just two days before, in ordinary circumstances would not venture out so late in the night, just to hand over receipt regarding purchase of his robbed mobile. These circumstances make the prosecution story relating to the manner of arrest highly improbable. Therefore, it should have put the court on guard as to look for corroborative pieces of evidence before accepting the prosecution story as credible. One such corroborative piece of evidence could be recovery of looted articles from the accused which, in the present case, is absent inasmuch as the trial court has already acquitted the appellant(s) of the charge of offence punishable under Section 411 IPC.

17. Taking a guarded approach we have therefore carefully examined the prosecution evidence to be satisfied about the truthfulness of the prosecution story. Having done so, we found that there appears some discrepancy in the statement of PW-10 (i.e., head constable Mursaleen, posted at P.S. Nand Nagri) and PW-13 (i.e., Narendra Singh Rana, the investigating officer of the case) regarding the place where they received information about the presence of the accused persons at the bus depot. In this regard, PW-10 (HC Mursaleen) stated:

> "On 5/12/2011, I was posted at PS Nand Nagri, on that day, I joined the investigation in the present case. I along with IO Insp. Narendra Singh Rana, SI Rajiv, Ct. Kushal Pal, Ct. Jasvir went to red light Nand Nagri, where complainant Imtiaz met us, who informed to the IO that four persons involved in the present case are standing near bus depot, Nand Nagri. After receiving information, we rushed to the Nand Nagri, bus depot where we found that four persons were standing near bus depot. Upon seeing them, complainant pointed out towards them by stating that they are the same persons who had committed offense with him."

On the other hand, PW-13, Inspector Narendra Singh Rana (i.e., the investigation officer of the case) stated:

> "On 5.12.2011, I was posted as Inspector in PS Nand Nagri, Delhi. On that day, I along with SI Rajiv, HC Mursaleen, Ct. Jasvir and Kushal Pal along with complainant left the police station for investigation of the case. When we reached at main road in front of Nand Nagri DTC Depot, the complainant Imtiaz pointed out towards four young men i.e., Arif, Wahid, Narendra alias Bhola and Anshu, who are present in the court today. He further stated that the accused persons had robbed him and others in Gramin Seva bus while they were travelling from Nand Nagri to Gol Chakkar, Loni. I with the help of staff had apprehended the accused persons and interrogated and after interrogation all the accused persons were arrested…"

The statement-in-chief of PW-1 (i.e., Imtiaz), however, corroborates the statement of PW-13 noticed above. PW-1 in his statement-in-chief stated:

> "The police had asked me to produce the copy of the receipt of my mobile phone *vide* which I had purchased the same. I went to my house and brought the same on the next day and produced the same before the police. Same is Ex PW1/C which bears my signature at point A. At that time when I was going to the PS, I saw all the four accused persons present in the court were standing at the

> bus stop of Nand Nagri. I told the police that the accused persons are standing at the bus stop of Nand Nagri. The police along with me immediately went there and on my pointing out they had apprehended all the four accused persons present in the court."

18. From the statements extracted above, what is clear is that, according to the prosecution, the police got information about the presence of accused persons at the bus depot from PW-1. However, where that information was given by PW-1 to the police, there is discrepancy in the testimony of witnesses who were part of the team that effected arrest of the accused persons. According to PW-10, information was given when the police party, which had already left the police station, met PW-1 at the red light of Nand Nagri whereas according to PW-13 the police team left the police station with the complainant (i.e., PW-1) and at bus depot, PW-1 pointed towards the accused persons. PW-1's statement- in -chief is also on similar terms as that of PW-13 inasmuch as he states that when he spotted the accused persons near the bus depot, enroute to the police station, he went to the police station and informed the police about their presence there, whereafter the police team accompanied him to apprehend the accused persons. But if the version of PW-1 is correct, there ought to have been a record of receipt of such information at the police station. Because, in ordinary course, before leaving the police station, based on any information, the police officer enters the information in the relevant diary and then proceeds. Here there is no disclosure in the testimony of any of the police witnesses that before leaving the police station, the information provided by PW-1 regarding spotting the accused was entered in any of the diaries maintained at the police station. Besides that, PW-1, during cross-examination, made a self-contradictory statement which renders the prosecution case regarding arrest and recovery from the accused persons doubtful. The relevant portion of PW-1's statement during cross-examination is extracted below:

> "I.O. of the case met him at the police station when the PCR took him and the accused persons to the police station. On the next day, he again met me at the bus stop of Nand Nagri where he remained with the I.O. for 10 to 15 minutes, thereafter, the I.O. did not meet me. I saw the

> accused person present in the Court on the date of the occurrence and thereafter, I have seen them in the court on the date of this matter.
>
> (emphasis supplied)

The underscored portion of PW-1's statement would suggest that PW-1 had not seen the accused persons on 5.12.2011 (i.e. the date of arrest) because the date of the occurrence was 3.12.2011.

19. In respect of recovery from the accused persons, PW-1, who was signatory to seizure memorandums, during cross-examination, stated:

> "It is correct that IO obtained my signature on blank papers and had not recorded my statement. It is further correct that statement Ex. PW1/A bears my signature at point A, but at that time it was blank."

20. From the statements of key witnesses extracted above, and on cumulative analysis of the circumstances discussed above, while taking into consideration the statements of accused-appellants recorded under Section 313 of the Code of Criminal Procedure, 1973 that they were picked up from home and falsely implicated by the police, a serious doubt is cast on the manner in which the prosecution claims to have arrested the accused. Unfortunately, the High Court and the trial court were not circumspect while evaluating the prosecution evidence and thereby failed to test the prosecution evidence on the anvil of probability as was required in the facts of the case. For the reasons above, we hold that the arrest of the accused persons in the manner alleged by the prosecution is highly doubtful and unworthy of acceptance.

21. Once we doubt the manner in which the accused were stated to have been arrested, the alleged recovery of screw driver, knives and country-made pistol made at the time of arrest is rendered unacceptable. Moreover, weapons /articles allegedly recovered are not so unique that they cannot be arranged.

Dock Identification by few eye witnesses not reliable

22. Normally, where accused persons are unknown and are not named in the FIR, if the prosecution case as regards the manner in which they were arrested is disbelieved, the Court should

proceed cautiously with other evidence and objectively determine whether all other circumstances were proved beyond reasonable doubt.[3] In this light we shall now consider the evidence relating to identification of the accused persons. Admittedly, this is a case of night incident. Though seven eye witnesses of the incident were examined by the prosecution, only three (i.e., PW-1, PW-5 and PW-6) identified the accused in court. Out of the remaining four, three including the driver categorically stated that the accused persons are not those who robbed the passengers that night. The fourth one stated that it was too dark, therefore, he is unable to recognise. PW-1, at whose instance the arrest of the accused persons was allegedly effected, during cross-examination, stated that he saw the accused persons first on the date of the incident and second on the date fixed in the case. Admittedly, no test identification parade was conducted and the statement of PW-1 was recorded in court on 28.05.2013, that is, after 16 months of the incident. In such circumstances, not much reliance can be placed on his statement.

23. As far as dock identification by the remaining two eye witnesses is concerned, they identified the accused persons during their deposition in court in the year 2015, that is, after nearly 4 years of the incident. PW-6, though stated that he identified the accused persons on 06.12.2011 while they were in the police lock-up, admitted that he went to the police station without being summoned. Interestingly, as per his description in the record, he is a resident of Aligarh. During cross-examination, he stated that he visited the police station on 06.12.2011 at 07:30 a.m. Considering that he is a resident of Aligarh, his statement that he visited the police station without summons on 06.12.2011 at 07:30 a.m. does not inspire our confidence. Admittedly, memory of those witnesses was not tested through a test identification parade. In such circumstances, when three eye witnesses stated that accused persons were not the ones who committed the crime and another one stated that it was too dark, therefore, he could not recognise, bearing in mind that the accused persons were not known to the eye witnesses from before, not much reliance can be placed on the dock identification.

3. See Manoj and others v. State of Madhya Pradesh, (2023) 2 SCC 353, paragraph 88

24. In such circumstances, and in absence of corroborative evidence of recovery of looted articles at the instance of or from the accused persons, in our view, this was a fit case where the appellants should have been given the benefit of doubt.

25. In view of the analysis and conclusions above, these appeals are allowed. The impugned judgment and order of the High Court is set aside. The appellants are acquitted of the charge(s) for which they were tried and convicted. They are reported to be on bail. They need not surrender. Their bail bonds stand discharged.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan