

(2014) 11 CAL CK 0093

Calcutta High Court

Case No: C.R.As. 97, 122 and 280 of 2011

Goldy Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 5, 2014

Acts Referred:

- Arms Act, 1959 - Section 25(1B)(a)
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 34, 392, 397

Hon'ble Judges: S. Chatterjee, J; Nishita Mhatre, J

Bench: Division Bench

Advocate: P.S. Bhattacharyya, Advocate for the Appellant; Anand Keshri, Advocate for the Respondent

Judgement

Samapti Chatterjee, J.

The appellants preferred the instant appeals assailing the Judgment and Order of conviction passed in Sessions Trial No. 02(04)09 and Sessions Case No. 03(04)08 by the 1st Fast Track Court of Additional Sessions Judge, Sealdah, 24-Parganas (South) on 23rd day of December, 2010 convicting the appellants/petitioners under Sections 392/ 34 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 5000/- and in default of payment thereof to further undergo Rigorous Imprisonment for 6 months for the commission of offence.

Each of them are also directed to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs. 5000/- and in default of payment thereof to further undergo Rigorous Imprisonment for 6 months for the commission of offence u/s 397/34 of the Indian Penal Code.

The accused Mithu Thakur only is directed to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs. 3000/- and in default of payment thereof to further

undergo Rigorous Imprisonment for 3 months for the commission of offence u/s 25(1B)(a) of the Arms Act.

2. The case made out by the prosecution may be summed up thus:

On the date of incident being 04.10.06 in the evening at 7.00 P.M Mithun Das went to the Office of Joy Singh Babu at No. 11 Cossipore Road at Joy Enterprise in order to collect money and was returning back along with Rs. 30,000/- and when he reached nearby Chitpore bridge these accused persons gheraoed him for the purpose of committing robbery. Seeing these accused persons he tried to flee away from that place but these accused persons chased him and looted the amount of Rs. 30,000/-. He thereafter informed the incident to the owner of petrol pump namely Goutam Ghosh and one FIR was lodged before the Chitpore P.S.

When Oral Complaint was lodged before the Officer on duty, he reduced the same into writing and accordingly the Officer-in-Charge, Chitpore PS started Chitpore PS Case No. 146 dated 05.10.06 u/s 392/397/34 of the Indian Penal Code and 25(1B)(a) Arms Act. Investigation was started and in course of investigation these accused persons were arrested. After detention for few days they were enlarged on bail.

After completion of investigation, police submitted charge sheet in this case against these 3 accused persons. Accordingly trial started and after completion of trial Learned Additional Sessions Judge convicted them as aforesaid.

3. In course of trial, the prosecution examined as many as 9 witnesses.

4. P.W.1 is witness of the seizure list who in his evidence deposed that the police obtained his signature on white blank paper at police station.

5. P.W.2, employee of Joy Singh of Joy Enterprises who gave Rs. 30,000/- to Mithun Das the representative of the said petrol pump. He in his evidence stated that he heard that the said money was snatched by some miscreants. In his cross examination he stated that he has no document to show that he gave money to the employee of the said petrol pump i.e. namely Mithun Das. He further stated that he was not interrogated by the police and for the first time he deposed before the Court.

6. P.W.3 dealer of Indian Oil Corporation stated in his evidence that when his employee was returning from the office after collecting Rs. 30,000/- from Joy Enterprise at that time near Chitpur bridge there was an incident of robbery and few persons caught hold of his collar and body and also snatched money from him. P.W.3 further deposed that he was informed of the incident by Mithun Das, his employee over phone. Thereafter the FIR was lodged on his behalf by Mithun Das at Chitpur Police Station at late night. He also deposed that subsequently he came to know that approximately Rs. 16,000/- out of Rs. 30,000/- was recovered from the miscreants. He further deposed that he cannot identify the accused in trial. He further deposed that no appointment letter was given to Mithun Das by his

company. The said Mithun Das used to take salary by putting his signature on register such register was not seized by police. He has conceded that his accounts did not reflect that the aforesaid amount was due to his concern from Joy Enterprises.

7. P.W.4 is the owner of the Joy Enterprise who on 4th October, 2006 gave Rs. 30,000/- to said Mithun Das. He also learnt that the said money was snatched from Mithun Das by some miscreants. When the said Das came to him he advised Mithun Das to lodge FIR at the police Station. In his cross examination the P.W.4 said that after paying money he did not obtain signature of Mithun Das on any paper.

8. P.W.5 was the seizure list witness subsequently declared hostile.

In his evidence he stated that he was compelled to sign on paper as forced by police.

9. P.W.6 is the witness of the seizure of revolver but failed to identify the revolver. P.W.6 also unable to identify the accused persons. In his evidence he also stated that without going through the contents he signed on the seizure list on a blank paper. Further he stated that he was also compelled to sign on some blank papers at the police station.

10. P.W.7 is the police personnel was posted at Arms Department as Arms Expert at Lal Bazar.

11. P.W.8 is the police officer who conducted investigation at the first instance and started concerned P.S. case dated 05.10.2006 under Section 392/ 397/ 34 of the Indian Penal Code and 25(1B)(a) of the Arms Act (Formal FIR marked as Exbt.8). In his evidence he stated that he did not prepare any rough sketch map of the place of occurrence. In his evidence he stated that he found a person lying on the road and the complainant identified one of the miscreants who chased him along with other and from the garbage dump the said unknown miscreants had recovered a fire arm along with one live cartridge and handed over the same to him which was seized by him on 5th October, 2006 (marked as Exbt.3/2). He also arrested other 2 accused persons as per statement of the previous accused. Other two accused persons were Goldy Singh and Tony Upadhyay on 2nd October, 2006. The P.W.8 recovered Rs. 16,000/- from the possession and custody of Goldy Singh and prepared the seizure list marked as Exbt.4/1. He further stated as per Courts order and of Jimma Bond he handed over Rs. 16,000/- as seized by him to the de facto complainant. P.W.8 further stated that subsequently before the Learned 5th J.M., Sealdah T.I Parade of 3 accused persons namely Mithu Thakur, Goldy Singh and Tony Upadhyay was held but he did not collect concerned TI Parade Report.

12. P.W.9 is the de facto complainant namely Mithun Das. He in his evidence stated that he did not know the contents of the paper when he signed the paper at Cossipore Police Station. Out of three accused persons he identified one person.

13. Mr. P.S. Bhattacharyya, learned Advocate appearing on behalf of the appellants urged that FIR was lodged on 4th October, 2006 but the case was initiated on 5th October, 2006. No currency notes of Rs. 16,000/- were produced before the Court and he further submitted that no currency note was ever identified by P.W.9, the de facto complainant. There were two seizure witnesses. One was examined and other was declared hostile.

He further contended that the TI Parade Memo was also not produced in the Court.

Mr. Bhattacharyya also urged that it is evident from the statement under Section 313 of Cr.P.C of accused Goldy Singh in question No. 9 that the P.W.8 prepared seizure list of the fire arm and subsequently arrested the accused persons but it was denied by the accused Goldy Singh. In Question No. 10 it was asked that the P.W.8 showed that from the possession of Goldy Singh he recovered Rs. 16,000/- by virtue of seizure list marked Exbt.4/1. T.I Parade was also held where the accused Goldy Singh was identified. In answer the accused Goldy Singh stated that the statement is incorrect and false.

14. Mr. Keshri, learned Advocate appearing on behalf of the prosecution contended that on 18th October, 2006 TI Parade was held instead of 16th October, 2006. Complainant was able to identify all three accused persons. A sum of Rs. 16,000/- was recovered from accused Goldy Singh and from Mithu Thakur one country made fire arm and one live cartridge was recovered on 5th October, 2006 from a garbage dump.

15. Now the question is whether the prosecution has been able to connect the present appellant with the alleged crime?

16. On a close and critical analysis of the evidence both oral as well as documentary with meticulous care we find that the prosecution failed to establish their case against the appellant as the currency notes of Rs. 16,000/- which were allegedly recovered from accused Goldy Singh were not produced before the Court and were not identified also by de facto complainant P.W.9.

17. We find that out of two seizure list witnesses one was examined and other was declared hostile by the prosecution and both of the seizure list witnesses in their evidence stated that they were compelled to sign on blank paper by the police at the police Station.

18. We also find the P.W.6 though signed the seizure list but failed to identify the recovered revolver.

19. We also find the FIR was lodged on 4th October, 2006.

20. We find that P.W.8 in his evidence stated that he did not collect the TI Parade Report according to the provisions of law. No TI Parade report was produced before the Court.

21. We find that there is a discrepancy between the testimonies of PWs and the FIR. P.W.9, de facto complainant did not mention the names of the accused persons in the FIR.

22. Therefore, in the facts and circumstances including the evidence stated above, we have no hesitation to hold that there are several lacunae, inconsistencies, contradictions, absurdities, loose ends, and untold stories in the prosecution case. So the prosecution case in our view, cannot be said to have been proved beyond all doubts. The learned Trial Court had therefore, wrongly convicted the appellants of the alleged offence. The Judgment and Order of conviction and sentence dated 23rd December, 2010 in Sessions Trial No. 02(04)09 (Sessions Case No. 03(04)08) convicting the appellants of the offence punishable under Sections 392/ 397/ 34 of the Indian Penal Code and 25(1B)(a) Arms Act is, therefore, set aside. The appellants is found not guilty of the charge under Section 392/ 397/ 34 of the IPC and 25(1B)(a) Arms act framed against them.

23. The appellants are acquitted. They be released from the custody if their detention is not required in any other case.

24. The appeal is accordingly allowed.

25. Urgent certified photostat copy of this Judgment, if applied for, be supplied to the learned Advocate for the parties upon compliance of all formalities.