

PBFZE10021412023



Presented on : 24-04-2023
Registered on : 24-04-2023
Decided on : 12-09-2023
Duration : 0 years, 4 months, 18 days

IN THE COURT OF
Judicial Magistrate First Class-1
AT Abohar,Fazilka
(Presided Over by Sh. Arjun Singh Sandhu)

CHI/112/2023

STATE
VERSUS
1. Chandan son of Vinod Kumar, 2. Vinod Kumar @ Gogdi son of Balwant, 3. Chetanya Bhadu @ Chetan son of Pawan Kumar, 4. Promila Rani wife of Pawan Kumar, All residents of Village Diwan Khera, Tehsil Abohar. Accused

FIR No. 23 dated 08.03.2023
Under Section : 392,473,457,506 and 34 of IPC
and Sections 25/27/30/54/59 of Arms Act
Police Station : Bahavwala, Abohar.

Present: Sh. Vinod Kumar, APP for the State.
Accused Promila on bail with Sh. Surin Karwasra, Advocate.
Accused Chandan, Vinod Kumar and Chetanya Bhadu in
custody produced in Court.

JUDGMENT

1. The above stated accused have been forwarded by the Officer
In-charge, Police Station Bahavwala, Abohar before this court to face trial

for the commission of offences punishable under Sections 392, 473, 457, 506 and 34 of IPC and Sections 25/27/30/54/59 of Arms Act of Indian Penal Code in case bearing F.I.R. No. 23 dated 08.03.2023 Bahavwala, Abohar.

2. The prosecution story, in brief, is that the present FIR was registered on the statement of complainant Surinder Kumar son of Ram Lal resident of Village Modikhera, Tehsil Abohar, who stated that he is resident of above said address and he is working as salesman at Reliance Petrol Pump at Village Dodewala. On 02.03.2023 at about 12:41 am, when he and Som Parkash were on duty, one Car make Swift, colour white bearing RC No. DL-06V-9069 came there and two persons came out from the Car and asked me to fill the diesel tank of the Car and I fill the tank of the Car but when I asked them for payment, one person came out from the Car and by putting pistol upon me and snatched Rs. 1800/- from my hand and they ran away from the spot. On the basis of statement of complainant, the formal FIR was registered. I.O. went to the spot and prepared rough site plan. Accused were arrested. Statements of witnesses were recorded. On completion of investigation, challan against accused persons was presented in the court.

3. On appearance of accused in the court, copies of all the documents sent along with the report and relied upon by prosecution, were supplied to him, free of costs as per mandatory requirement of section 207 Cr.P.C.

4. From the perusal of those documents and after hearing learned A.P.P. for the State and learned defence counsel, sufficient

grounds were made out to initiate trial against accused for the commission of offences punishable under 392, 473, 457,506 and 34 of Indian Penal Code and Sections 25/27/30/54/59 of Arms Act and the charge was framed accordingly, to which accused pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution got examined following witnesses:-

PW-1	Surinder Kumar(complainant)	Hostile
PW-2	Som Parkash(eye witness)	Hostile
PW-3	ASI Balvir Singh	Witness who deposed and proved arrest memo Ex. P3/A, intimation of arrest Ex. P3/B, recovery memo Ex.P3/C
PW-4	ASI Surinder Pal	Investigation Officer of present case who deposed and proved statement Ex. P4/A, police proceedings Ex. P4/B, FIR Ex. P4/C, rough site plan Ex. P4/D, arrest memo Ex. P4/E and Ex. P4/F, recovery memo Ex. P4/G, site plan Ex. P4/H, disclosure statement Ex. P4/I, recovery memo Ex. P4/J and Ex. P4/K, case property MO1

Thereafter, prosecution evidence was closed by order as the material witnesses were turned hostile.

6. Since there was no incriminating evidence against accused, as such the recording of statement of accused under Section 313 Cr.P.C. was dispensed with.

7. This court has heard the submissions made by Ld. APP for the State and Ld. Defence counsel and has also gone through the prosecution evidence. From the entire case, following points for determination emerge out of:

1. *Whether on the night of 02.03.2023 at about 12:41 AM accused persons having common intention fixed a forged RC number plate on Swift desire Car to commit crime?*
2. *Whether on the same date, time and place, accused committed theft/robbery ?*
3. *Whether evidence led on file by prosecution is sufficient to hold accused guilty and to convict and sentence them?*

POINTS NO.1 TO 3 FOR DETERMINATION :-

8. All points for determination have been taken up together for the sake of brevity and to avoid repetition. Learned APP for the State argued that accused have committed offence punishable under Sections 392, 473, 457, 506, 34 of IPC and 25/27/30/54/59 of Arms Act, PS Bahavwala and he has prayed for conviction of accused by taking into consideration the statement of complainant and other witnesses, recorded by police during investigation.

9. On the other hand, Ld. Defence counsel has raised his counter arguments thereby stating that accused are absolutely innocent

persons and they have been falsely implicated in this case. Prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt because material witnesses in this case i.e. complainant and eye witness have not supported the case of prosecution and have been declared as hostile. Thus, affording benefit of doubt, accused must be acquitted for want of proper, cogent and convincing prosecution evidence.

10. After giving thoughtful consideration to the rival submissions made by Ld. APP for the State as well as Ld. Defence counsel, this court has minutely scrutinized the oral and documentary evidence and after going through the entire record otherwise available on the file, is of the considered view that it is the burdened duty of prosecution to prove its case beyond reasonable doubt. Accused has constitutional right to remain silent during the course of trial and if any doubt is created in the case of prosecution, thus benefit of it must be given to accused.

11. In the present case, Surinder Kumar, complainant, while appearing as PW-1 deposed to the effect that on the day of occurrence some unknown persons came out of Car at Reliance Petrom Pump and forcibly took away Rs. 1800/- from him on pistol point, but he is not known to said offending person and he does not know the RC number of their Car. PW-1 Surinder Kumar was declared to be suppressing truth and was allowed to be cross-examined by learned APP for the State, but even after lengthy cross-examination, nothing favourable to the case of prosecution came out.

12. Similarly, PW-2 Som Parkash, alleged eye witness, was also declared to be suppressing truth and was allowed to be cross-examined by Learned APP for the State, but even after lengthy cross-examination, nothing favourable to the prosecution version came out.

13. No doubt, statements of hostile witnesses are not to be thrown overboard and even a part of the statement of hostile witness, which is consistent with the prosecution story, can still be of help to convict accused. In the case titled as **State of Rajasthan Vs. Teg Bahadur 2004 (4) RCR (Cr.) 538**, Hon'ble Supreme Court of India has held that evidence of a hostile witness should not be totally rejected, if submitted in favour of prosecution or accused, but it can be subject to close scrutiny and that portion of the evidence, which is consistent with the case of prosecution or defence may be accepted. I have gone through the statements of complainant PW-1 Surinder Kumar and eye witness PW-2 Som Parkash from that angle also. But, I do not find it to be of any assistance to the case of prosecution. It transpires that the star and material witnesses in the present case have turned hostile and failed to support the case of prosecution. Moreover, instead of supporting the prosecution version, complainant and eye witness have shattered it.

14. Evenmore, testimony of the other witness examined by prosecution, such as, PW-3 ASI Balvir Singh and ASI Surinder Pal are only qua the sequence of investigation conducted by them and loses its significance in the absence of any support from the testimony of star witnesses. These witnesses are formal in nature and their lone testimonies

holds no value, when the star witnesses have disowned the case of prosecution. There is nothing in the case file, which can connect accused present in the court with the offence charged with.

15. Therefore, in view above discussion, it would be valid enough to conclude that prosecution has miserably failed to prove its case against accused. Consequently, the accused are ordered to be acquitted of the charges framed against them. Their bail bonds and surety bonds stands discharged. The case property, if any, is ordered to be disposed off as per rules, after awaiting the result of appeal/ revision, if any. File be consigned to the record-room, after due compliance.

Pronounced in open Court:
Dated: 12.09.2023

(Arjun Singh Sandhu), PCS,
Judicial Magistrate Ist Class,
Abohar.

Sandeep Kumar,
Stenographer-III

Present: Sh. Vinod Kumar, APP for the State.
Accused Promila on bail with Sh. Surin Karwasra, Advocate.
Accused Chandan, Vinod Kumar and Chetanya Bhadu in
custody produced in Court.

Accused Chandan, Vinod Kumar and Chetanya Bhadu in custody produced in the Court by the Jail Authorities. PW4 ASI Surinderpal is present and examined. No other PW is present. Perusal of case file reveals that the material witnesses in this case have already been examined and star witness of the present case has already been declared as hostile. So, no useful purpose will be served by adjourning the case for prosecution evidence further as case has been weakened due to hostile testimonies of star witnesses. In these circumstances, evidence of the prosecution is closed by order.

There is no incriminating evidence against accused on record, therefore, there is no necessity to record the statement of accused u/s 313 Cr.P.C., accordingly recording of statement of accused u/s 313 Cr.P.C. is dispensed with.

Arguments heard and concluded. Vide my separate detailed judgment of even date, the accused are acquitted from the charges framed against them. Their bail bonds and surety bonds stands discharged. The case property, if any, is ordered to be disposed off as per rules, after awaiting the result of appeal/revision, if any. File be consigned to the record-room, after due compliance.

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