

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
4TH COURT, HOWRAH.

Present : Shri. Mihir Kumar Mondal,
Additional Sessions Judge,
4th Court, Howrah.

Sessions Trial No. 72 of 2016

State

Vs.

1. Md Nosad
2. Md Adil @Nanki
3. Asgar Ali @ Chand @ Chanua
4. Md Kaum
5. Tipu Ansari
6. Abhijit Pal@ Chottu @Patol
7. Prabhat Das @ AluAccused persons.

Charges under section 395, 397, 412 of the I.P.C

Date of Delivery of Judgment : 25.09.2020.

J U D G M E N T

This is a case under Section 395, 397 & 412 of the I.P.C. The fact of the case in brief is as follows :

One Piyal Bhadra on 12.05.2015 lodged a written complaint with O.C., Sankrail P.S. to the effect that on 12.05.2015 in the morning at about 9.15 a.m he came to know that his driver and cashier were fired while they were carrying money from office to bank. He reached at the P.O after 30 minutes and prior to that he instructed his other office staffs to admit the injured persons to the West Bank Nursing Home. He went to the Nursing Home and talked to his injured staff and they narrated that while they were crossing Podrah Halderpara, Andul Road, three guys riding on a motor bike coming from behind broke the rear window and shoot thrice and snatched cash of Rs.10,81,000/- and left the place riding on bike. His cashier Debarata Pulai and driver Md. Israfil sustained gun shot injury. Accordingly, he prayed for investigation.

On receiving the written complaint, formal F.I.R. was drawn up against unknown miscreants under sections 392/397 of the I.P.C and under section 25/27 of the Arms Act and investigation was started. In the midst of the investigation section 412 and section 395 of the I.P.C were added. The I.O. on completion of the investigation submitted charge-sheet against nine accused persons under sections 395/397/412 of the I.P.C. On submission of the charge-sheet by the I.O., the then Ld. C.J.M, Howrah on 18.01.2015 took cognizance upon the same and on 28.01.2016 after complying all the legal formalities committed the case before the Ld. Sessions Judge Court at Howrah for further proceeding in respect of nine accused persons namely Md Nausad, Md Adil @Nanki, Asgar Ali @ Chand, Md Kaum, Md Rizwan, Aslam Ansari, Tipu Ansari @Nasim, Abhijit Pal @ Patol and Prabhat Das @ Alu. The case record was also transmitted. On receiving the case record, the Ld. Sessions Judge, Howrah transferred the case to this court for its disposal in accordance with law.

Nine accused persons including two accused persons in J.C appeared and produced before the Ld. Sessions Judge, Howrah. Subsequently, W.A against two accused persons namely Md Rizwan and Aslam Ansari were issued. Thereafter by order dated 20.03.2017 those two wanted accused persons were filed for the present.

This court on 26.04.2018 complying all the legal formalities framed charge against seven accused persons namely Md Nausad, Md Adil @Nanki, Asgar Ali @ Chand, Md Kaum, Tipu Ansari @Nasim, Abhijit Pal @ Patol and Prabhat Das @ Alu under sections 395, 397, 412 of the I.P.C. The contents of the charge so framed had been read over and explained to the accused persons to which they each pleaded not guilty and claimed to be tried. To prove the case, the state prosecution examined all total 10 witnesses. The evidence for prosecution was closed and the accused persons were examined u/s 313 Cr.P.C. In such examination u/s 313 of the Cr.P.C., the accused persons pleaded innocence but refused to adduce any witness as D.W. Heard argument of both sides.

POINTS FOR DETERMINATION

1. Are the accused persons on 12.05.2015 at about 9.15 a.m. at Podrah Halder Para Crossing, Andul Road under P.S. Sankrail committed dacoity?
2. Are the accused persons on 12.05.2015 at about 9.15 a.m. at Podrah Halder Para Crossing, Andul Road under P.S. Sankrail committed robbery?

or dacoity and at the time of committing such robbery of dacoity used deadly weapon such as fire arms to commit murder and gun shot injury to Md Israfil and Debabrata Pulai?

3. Are the accused persons on 12.05.2015 at about 9.15 a.m. at Podrah Halder Para Crossing, Andul Road under P.S. Sankrail dishonestly received or retained stolen property i.e. huge amount of cash money belonging to Pepsi Uddog knowing or having reason to believe that such amount of cash money had been transferred by the commission of dacoity?

DECISION WITH REASONS

At the time of argument, Ld. P.P. in charge has argued that the state prosecution has adduced ten witnesses including the de facto complainant. He has candidly submitted that state prosecution has failed to examine the I.O, R.O and other police witnesses. He has candidly submitted that the prosecution witnesses have failed to depose satisfactorily in favour of the prosecution case. He has prayed for passing necessary order.

Ld. Defence Counsels have argued that the accused persons had been falsely implicated in this case. They have argued that the state prosecution during trial did not produce any item of the seized alamat for identification by the seizure witnesses as well as the state prosecution has failed to prove the contents of two seizure lists in which signatures of witnesses have been proved. They have contended that none of the witnesses has been able to identify any of the accused persons before the court. They have specifically mentioned that Md Israfil (P.W.2) and Debabrata Pulai (P.W.6) were witnesses of the T.I. parade, but those two witnesses during trial have failed to identify any of the accused persons before the court.

They have argued that according to the prosecution story two persons sustained gun shot injury but according to the Exbt.4 and Exbt.5, the doctor who examined the injured Md Israfil and Debabrata Pulai did not find any gun shot injury in the person of respective injured persons. They have argued that report of T.I parade has been proved but the evidences of witnesses of the T.I. parade did not support the version of the T.I. parade report. They have argued that actually none of the witnesses has been able to adduce cogent, reliable and clinching evidence in support of the prosecution case. They have prayed for acquittal of the accused persons.

Now, in this environment of argument and counter argument submitted by both the parties, we should dive into the evidence on record to see how far the state prosecution has been able to bring home the charge by adducing best, reliable and clinching evidence.

P.W.1 Piyal Bhadra is the de facto complainant and he during his evidence has proved the written complaint. He has disclosed that on 12.05.2015 at about 9.00 a.m while Debabrata Kulai was proceeding towards Bank of Baroda, Andul Branch by vehicle bearing no.WB 22U 1777 driven by the driver Md Israfil, three persons riding on a motor bike restrained the movement of the said vehicle and one of those three miscreants fired targeting Innova vehicle, resulting to which Debabrata Kulai sustained gun shot injury probably on this right hand and Md Israfil sustained gun shot injury on his waist. He has disclosed that miscreants snatched a bag containing Rs.10,81,000/- from the possession of Debabrata Kulai and left the place. He has disclosed that one Brindabon Saha, employee of his office, was passing through the Andul Road at that time and he informed the incident to him. During cross examination he has admitted that he did not mention in the complaint that Brindabon Saha informed him about the incident over mobile phone. He has admitted that he was not present at the P.O at the time of the occurrence and he did not disclose the incident to this case to any person prior to disclosing the incident before the court.

P.W.2 Md Israfil is the driver of the vehicle bearing no.WB 22U 1777. He has disclosed that on 12.05.2015 he was driving the said vehicle and proceeding towards Bank of Baroda beside Petrol Pump near College Ghat and while they were proceeding towards the bank and reached Halder Para, one person riding on a bike restrained the movement of the vehicle and he fired aiming him and he sustained gunshot injury on his waist. He has disclosed that the miscreant also fired aiming cashier Debu, resulting to which he sustained gunshot injury on his left arm. He has failed to identify any of the accused persons before the court.

P.W.3 Paltu Biswas has identified his signature on a paper. During cross examination he has admitted that he did not witness anything about this case and he was not interrogated by the police.

P.W.4 Subir Biswas has stated that he heard that one incident of snatching of money took place.

P.W.5 Shyamal Halder has denied his knowledge about the incident of this case.

P.W.6 Debabrata Pulai has deposed that on 12.05.2015 at 9.00 a.m he was proceeding towards Andul Road Branch of Bank of Baroda to deposit cash amounting to Rs.14,00,000/- and while they reached at Halder Para bus stoppage two motor bikes with 4/5 riders stopped the movement of their vehicle and two of the riders came down and placed a revolver behind him and fired from fire arms aiming him and the driver, resulting to which he sustained gunshot injury on his left upper arm. He has disclosed that he was taken to Howrah District Correctional Home in the TIP held in respect of the suspect and he identified two suspects. The witness has failed to identify the accused persons who are present before the court.

P.W.7 Prasanta Ghosh has deposed that on 12.05.2015 at about 9.30/10.00 a.m while he was taking tea at a tea stall near Panchpara Petrol Pump heard that the vehicle carrying cash of their agency was attacked by the miscreants and firing from fire arms took place. He has proved his signature on the seizure list dated 20.07.2015. During cross examination he has admitted that he did not see the occurrence of this case.

P.W.8 Dr. Mongaldeep Dutta, Emergency Medical Officer of Narayana Multispeciality Hospital, Andul Road, Howrah has deposed that on 12.05.2015 he examined two patients namely Md Israfil and Debabrata Pulai and prepared medical examination reports. He has disclosed that during clinical examination he observed no bullet piercing injury in the person of Md Israfil. He has disclosed that X-ray was done in respect of the patient Debabrata Pulai but observing X-ray plate he found no sign of bullet at the injured area. He found no bony injury of the patient Debabrata Pulai. During cross examination he has admitted that in both the injury reports he did not mention the age of the injuries.

P.W.9 Anil Naskar has deposed that he did not see the occurrence but he put his signature on a paper as per the instruction of the police. He has proved his signature on the seizure list. During cross examination he has admitted that he did not go through the contents of the written paper prior to putting signature thereon.

P.W.10 Dhrubajyoti Bhattacharayya, erstwhile Judicial Magistrate, 3rd Court, Howrah he held T.I Parade in respect of two suspects at Howrah District Correctional Home on 21.07.2015 in presence of two witnesses namely Md Israfil and Debabrata Pulai. He has disclosed that those two witnesses identified suspects namely Abhijit Paul @Patol and Prabhat Das @Alu by touching them.

In this case charge under sections 395, 397, 412 of the IPC had been framed against seven accused persons. We have found that in this case the State Prosecution has been able to examine ten witnesses including the de facto complainant and the Judicial Magistrate, who held T.I. Parade in respect of two suspects. During trial the state prosecution has been able to prove the written complaint and three signatures of witnesses on two separate seizure lists, two separate medico-legal report and one report of T.I. Parade.

The P.W.1 is the de facto complainant and he has proved the written complaint. Admittedly, the P.W.1 is not an eyewitness to the occurrence and according to his version he went to the P.O on receiving the information regarding the incident. Exbt.1 i.e. the written complaint depicts that the complainant directly went to the nursing home upon hearing about the incident and talked to the injured persons. In this case the state prosecution has failed to examine the I.O of this case and thus, the defence has been deprived of confronting the I.O referring the contradictory statements of the witnesses being resiled from their earlier versions. We have found that the P.W.1 has made improvement of his statement before the court regarding the incident. The evidence of P.W.1 is hearsay in nature and as per the law such evidence has no evidentiary value unless such evidence is corroborated by the persons from whom such witness got knowledge about the incident. It is revealed from the evidence of P.W.1 that one Brindabon Saha informed him about the incident but the state prosecution did not examine such Brindabon Saha as witness before the court. The I.O also did not cite such Brindabon Saha as witness in the CS. In my view, non production of the witness Brindabon Saha before the court attracts adverse presumption under section 114(g) of the Indian Evidence Act against the state prosecution. The fact remains that none of the witnesses such as P.W.1, P.W.2, P.W.3, P.W.4, P.W.6, P.W.7 and P.W.9 had been able to identify the accused persons before the court.

P.W.2 and P.W.6 are two injured persons and they are the eyewitness to the occurrence. Those two witnesses appeared in the T.I.P and according to the Exbt.6 they identified two suspects namely Abhijit Pal and Prabhat Das in the T.I.P by touching them. But the fact remains that both the witnesses failed to identify any such accused persons before the court on dock. Exbt.4 and Exbt.5 are two separate medico-legal reports. Exbt.4 depicts that no bullet pierce injury was found in the person of Md Israfil and X-ray report in respect of the patient Debabrata Pulai does not reveal any bullet in the injured area as well as there was no bony injury.

According to the prosecution case those two witnesses sustained gunshot injuries but Exbt.4 and Exbt.5 as well as evidence P.W.8 do not support the prosecution story. We have found that P.W.3, P.W.4 and P.W.5 did not make any incriminating statement against the accused persons as well as regarding the alleged offence. No seized alat was produced before the court for identification by the seizure witnesses. Moreover, the state prosecution has failed to prove two separate seizure lists.

It is found that the State prosecution has left so many lacunae of the prosecution case during trial. On scrutiny of the evidence on record, it is found that the prosecution witnesses failed to deliver cogent, reliable and clinching evidence in support of the prosecution case. It is found that the prosecution evidence is not sufficient to attract the ingredients of the offence punishable under sections 395, 397, 412 of the IPC.

So, I have no hesitation to hold that the state prosecution has been miserably failed to bring home the charge beyond the shadow of all reasonable doubt. In the result, the case fails.

Hence,

it is,

ORDERED

that the accused persons namely Md Nosad, Md Adil @Nanki, Asgar Ali @ Chand @ Chanua, Md Kaum, Tipu Ansari, Abhijit Pal@ Chottu @Patol and Prabhat Das @ Alu are found not guilty of the offences punishable under sections 395, 397 and 412 of the I.P.C and they are acquitted of this case under section 235(1) Cr.P.C. and they are discharged from their respective bail bond(s) and set at liberty.

No order regarding disposal of seized alat is being passed since other accused persons of this case are still absconding.

Dictated & Corrected by me.

ASJ

(Mihir Kumar Mondal),
Additional Sessions Judge,
4th Court, Howrah
25.09.2020