

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(SINGLE BENCH : HON. Mr. JUSTICE VED PRAKASH SHARMA)

Criminal Appeal No.1226 of 2002

- (1) Gopal S/o. Nanuram.
- (2) Tulsiram S/o. Bhura (dead).
- (3) Shivnarayan

... **Appellants.**

Vs.

State of M.P.
Through Police Station Mandsaur City,
Mandsaur.

... **Respondent.**

Criminal Appeal No.1233 of 2002

Mohammed Shafi @ Sharfu @ Guddu.

... **Appellant.**

Vs.

State of M.P.
Through Police Station Mandsaur City,
Mandsaur.

... **Respondent.**

-x-x-x-x-x-x-x-x-x-x-

**Shri L.S. Chandiramani and Shri Himanshu Thakur, Advocates for
appellants in Cr.A. No.1226/2002.**

**Shri Dharmendra Khanchandani, Advocate for appellant in Cr.A.
No.1233/2002.**

Shri Pankaj Wadhvani, Public Prosecutor.

-x-x-x-x-x-x-x-x-x-x-

JUDGMENT

(Delivered on May, 2017)

Cr. Appeal No.1226/2002 preferred by appellants Gopal, Tulsiram and Shivnarayan, and Cr. Appeal No.1233/2002 preferred by Mohammed Shafi @ Sharfu @ Guddu, having arisen from common judgment, have been heard analogously and are being disposed of by this common judgment.

2. The Sessions Judge, Mandssaur vide judgment dated

29.10.2002 pass in S.T. No.47/2002 has found the appellants guilty u/s. 459, 395/397 of the IPC and each of the appellants have been sentenced to undergo 5 years' RI and pay a fine of Rs.500/- u/s. 459 of the IPC; and to undergo 10 years' RI and pay a fine of Rs.2,000/- u/s. 395/397 of the IPC with usual default stipulation. Appellant Tulsiram died during pendency of appeal and, therefore, as per order dated 19.11.2013, the appeal stood abated qua him.

3. The prosecution story, which emerged during the course of trial, briefly stated, is that, on 11.9.2001, one Gyarsilal Verma (P.W.1), the then Deputy Collector, Mandsaur, who had come there on transfer, was staying in Room No.2 of the Rest House, Mandsaur. At around 10.30 in the night, some miscreants came there; they knocked the door of room of Gyarsilal Verma (P.W.1) forcefully and when the same was not opened, they broke open the door. Around 4-5 persons who barged in the room started assaulting Gyarsilal Verma (P.W.1) and asked him to handover all valuables, cash and other items. Allegedly, one Titan wrist watch, 2 golden rings, 1 silver ring, 1 'Ashta Dhatu' ring, 1,800/- rupees cash lying in the pocket of the pant and 2 attache case having clothing of day to day wear, were robbed by the miscreants. Thereafter, they came out of the room and assaulted Gopal (P.W.6), who was employed in the Rest House as Watchman. After around 15-20 minutes, the miscreants left the spot. Gyarsilal Verma (P.W.1), who was in the state of utter terror, immediately went to Circuit House on his Scooty and informed the Police about the incident. He was immediately taken to the Hospital. Dehati Nalsi (Ex. P/1) was registered by Shailendra Singh Jadon (P.W.9), the then SHO, Mandsaur, at the instance of Gyarsilal Verma

(P.W.1). Dr. K.C. Dave (P.W.7), who was posted as Doctor in the Civil Hospital, Mandsaur, examined Gyarsilal Verma (P.W.1) and found a number of injuries on his person as per MLC report (Ex. P/23). X-ray examination was also conducted by Dr. D.K. Bhatnagar (P.W.3), who vide report Ex. P/15 found fracture in the mandible bone. On the basis of first information report (Ex. P/20) a case against unknown persons came to be registered in the Police Station. Investigation was set into motion. On 6.10.2001, appellants Gopal, Mohammed Shafi @ Sharfu @ Guddu, Tulsiram (deceased) and Shivnarayan were arrested vide memo Ex. P/3 to P/6). On interrogation, appellant – Gopal, Mohammed Shafi, Tulsiram (deceased) and Shivnarayan respectively vide memo Ex. P/7, P/8, P/9 and P/10 made disclosures with regard to the articles of theft, which on the same day, were recovered from their respective houses in presence of ‘Panch’ witnesses viz. Salim (P.W.2) and Rafik vide seizure memo Ex. P/11, P/12, P/13 and P/14. Appellant Tulsiram (deceased) was put to identification parade and he was identified by Gopal (P.W.6). After usual investigation, a charge-sheet was laid before the competent Magistrate, who after complying with the provisions of Section 207 of Criminal Procedure Code, 1973 (for short, ‘the Code’), committed the case to the Court of Sessions. One of the accused person viz. Prakash was shown to be absconding and, therefore, the charge-sheet was filed against the four persons i.e. appellants herein.

4. Learned Sessions Judge framed charges u/s. 459 and 395/297 of the IPC against the appellants including Tulsiram (deceased), who abjured the guilt and claimed to be tried.

The prosecution, in order to bring home the guilt, examined as many as 9 witnesses before the trial Court including complainant Gyarsilal Verma (P.W.1) and injured Gopal (P.W.6), Dr. K.C. Dave (P.W.7) and Dr. D.K. Bhatnagar (P.W.3) have, respectively conducted medical and X-ray examination of Gyarsilal Verma (P.W.1) and Gopal (P.W.6). Shailendra Singh Jadon (P.W.9) is the Investigating Officer, while Vipin Kumar (P.W.8) is said to have conducted the test identification parade of Tulsiram (deceased). Apart this, documents vide Ex. P/1 to P/25 were also marked in evidence.

The incriminating circumstances appearing in the evidence against the appellants were brought to their notice in their examination u/s. 313 of 'the Code'. The appellants claimed total innocence with regard to all the circumstances and submitted that they have been falsely implicated in the case, however, no oral or documentary evidence was adduced by them.

6. The learned trial Court, on the basis of evidence adduced before it, vide the impugned judgment convicted and sentenced the appellants, as stated hereinabove.

7. Challenging the finding of conviction, it is submitted by the learned counsel for the appellants that there was no cogent evidence on record against the appellants to connect with the alleged offence and that, the learned trial Court on misreading and mis-appreciation of the evidence, has recorded the finding of guilt. It is submitted that the complicity of the appellants was solely based on the recovery of incriminating articles said to have been effected on the basis of alleged disclosure statements made by them. The contention is that Salim (P.W.2), who is said to be a

'Panch' witness of disclosure and seizure, has not supported the prosecution case while another 'Panch' witness viz. Rafik was not examined before the Court; the testimony of Shailendra Singh Jadon (P.W.9) is quite vague and uncertain and that, the same was liable to be ignored, however, the learned trial Court on erroneous appreciation of evidence, has recorded the conviction. It is further submitted that except Tulsiram (deceased), none of the appellants was identified in the test identification parade nor the articles which were allegedly recovered on the basis of disclosure statement, were identified during investigation. There is nothing on record to indicate as to on what basis, the appellants came to be arrested and, therefore, the impugned judgment is liable to be set aside.

8. Per contra, learned Public Prosecutor has supported the findings recorded by the learned trial Court so also the sentence imposed against the appellant. It is submitted that the learned trial Court on the basis of proper appreciation of evidence has come to the conclusion that the appellants committed crime, therefore, no interference is called for in the impugned judgment.

9. Heard the learned counsel for the parties and perused the record.

10. The appellants have not challenged that on the alleged date and time, Gyarsilal Verma (P.W.1) was robbed by around 5 unidentified assailants. Otherwise also, the testimony of Gyarsilal Verma (P.W.1) is clear and clinching on the point, who has deposed that on 11.9.2001, around 10.45 pm., 4-5 miscreants forced their entry in his room by breaking opened the door and thereafter assaulted him and robbed him of his valuables including

wrist watch, golden rings, silver ring, 'Ashta Dhatu' ring, 1,800/- rupees cash and wearables lying in the attaché case. His testimony on the point is free from any anomaly and, therefore, deserves to be accepted. Hence, it is found that Gyarsilal Verma (P.W.1) was robbed by some 4 or 5 miscreants on 11.9.2001 at around 10.45 pm.

11. The question arises, whether the appellants have committed the aforesaid crime. As per prosecution, appellant Gopal, Mohammed Shafi, Tulsiram (deceased) and Shivnarayan were arrested on 6.10.2001 i.e. around 25 days after the incident. Though Shailendra Singh Jadon (P.W.9) has deposed about their arrest, however, his testimony is totally silent on the point as to on what basis, these four persons could be arrested by the police on the same day despite the fact that the miscreants were unidentified persons. This leaves a serious gap in the prosecution story.

12. As per prosecution, appellant Tulsiram (deceased) was identified by Gopal (P.W.6), the watchman of the Rest House on 15.10.2001. The question arises, why remaining 3 appellants viz. Gopal, Mohammed Shafi and Shivnarayan were not put to test identification parade. It is noticeable that neither they were put to test identification parade during investigation nor during trial. Thus, the best evidence with regard their complicity, which could be procured was in fact, not procured, which is another serious lapse in the prosecution case.

13. Though, Shailendra Singh Jadon (P.W.9) has deposed that on 6.10.2001, the appellants after their arrest, were interrogated and Mohammed Shafi, Tulsiram (deceased) and Shivnarayan have made disclosures respectively vide memo Ex.

P/8 to P/10 and that, on the basis of these disclosure, recoveries were made vide Ex. P/11 to P/12, however, his testimony in this regard is quite superficial, vague and uncertain. He has not stated that where the interrogation was made? He has further not stated as to in whose presence, interrogation was made? He has also not specifically stated that as to from which place, which of the articles was recovered. His evidence is totally silent on the point that why the articles were not put to identification during investigation? Again, oral and documentary evidence regarding seizure is totally silent about the fact that the articles said to have been recovered were properly sealed after their seizure? Hence, the testimony of Shailendra Singh Jadon (P.W.9) regarding disclosure and seizure is not at all inspiring and, therefore, the same cannot be relied on. The learned trial Court while appreciating the evidence of Shailendra Singh Jadon (P.W.9) has totally overlooked all the aforesaid material aspects of the case.

14. Further, it has to be noticed that the articles which are said to be recovered on the basis of disclosure made by the appellants, are not valuable property, rather the same are wearing apparels of day to day use. Curiously, none of the valuable articles like wristwatch, gold ring, silver ring and 'Ashta Dhatu' ring have been recovered nor there is any explanation as to why such articles could not be recovered.

15. In the aforesaid premises, the evidence available on record with regard to interrogation, disclosure and seizure of incriminating articles is not inspiring to the extent that the same can be made sole basis of convicting the appellants. The learned trial Court has not taken into consideration the aforesaid vital

factors. The proof in the criminal cases has to be beyond reasonable doubt. In the instant case, sudden arrest of 4 persons on the same day followed by discovery and recovery creates a serious doubt about the proceedings and particularly in view of the fact that the testimony of Shailendra Singh Jadon (P.W.9) is not clear, clinching and reliable, the conviction recorded against the appellants cannot be sustained.

16. Accordingly, CRA No.1226/2002 and CRA No.1233/2002 are hereby allowed and the appellants viz. Gopal, Shivnarayan and Mohammed Shafi @ Sharfu @ Guddu are acquitted from offences u/s. 459 and 395/397 of the IPC. The appellants are on bail. Their surety bonds and personal bonds stand discharged.

**(VED PRAKASH SHARMA)
JUDGE**

Alok/-