

IN THE COURT OF SH. PANKAJ ARORA, MM-03, West/THC, Delhi.

STATE VS. Harmandeep Singh @ Hanuman

FIR No. 264/15

PS: NIHAL VIHAR

U/S: 411/34 of IPC

| | |
|--|---|
| ID No. | : 71856/16 |
| Date of commission of offence | : 18.04.2015 |
| Date of institution of the case | : 19.06.2015 |
| Name of the complainant | : Ms. Parsinder Kaur |
| Name of accused and address | : Harmandeep Singh @ Harman, S/o Narender Singh, R/o H. No. 102-103, Guru Nanak Vihar Chander Vihar, Delhi |
| Offence complained of or proved | : U/s 411 of IPC |
| Plea of the accused | : Pleaded not guilty |
| Final order | : Acquitted |
| Date of judgment | : 21.05.2020 |

J U D G M E N T

1 The case of the prosecution in brief is that on 03.04.2015, the complainant Parsinder kaur reported about theft of 2 gas cylinders, property documents, ration card, id card, sbi passbook, atm card and cash of Rs. 1500/- at unknown time, from her house situated at A-37B, Shiv vihar Vihar, Chander Vihar, New Delhi. On the basis of complaint of Ms. Parsinder Kaur, the present FIR came to be registered. Thereafter, on 18.04.2015, accused Harmandeep Singh @ Harman along with one JCL Kishan, who were already arrested in case FIR No. 305/15 made disclosure about the present case and got recovered one gas cylinder make Indane as per seizure memo. The accused Harmandeep singh was arrested in the present case and JCL kishan was produced in JJ Board concerned. After completion of necessary formalities, charge sheet was filed in this Court. Cognizance of the offence was taken. The accused was summoned.

Charge for the commission of offence under Section 411/34 of IPC. was framed against the accused, to which he pleaded not guilty and claimed trial.

2. The prosecution examined 9 witnesses in support of its case, which are as follows:-

1) Smt. Parsinder Kaur is the complainant in the present case, who was examined as PW-1. She deposed that on 03.04.2015, in the evening, she went to Guru Gobind Singh Hospital, Raghbir Nagar, Delhi in order to see her daughter Gagan Deep Kaur, whose name was inadvertently mentioned as Jaspreet Kaur in her complaint. She remained in the hospital for whole night to look after her daughter. On 04.04.2015, in the evening, she received a call from her neighbourer regarding theft in her house. After about 6.30 p.m., she came back at her house, she found that two gas cylinder, one of indane and another of Bharat Gas company, some document i.e. ATM Card Rs. 1500/, Ration Card and Adhar Card were missing. Some unknown person has stolen her articles. She called at the 100 number. Police official came and recorded her statement, which is Ex. PW-1/A. She had also shown the place of incident to the police officials. She had taken the cylinder of Indane company from Jaswant Singh, who was his neighbourer for the time being as his cylinder of Bharat Company was empty. The witness has correctly identified the case recovered property i.e. Indane gas cylinder, which is Ex. P-1.. During her cross-examination, she admitted that cylinder of her house gets changed after every one and two months. Only red colour cylinders are received by way of delivery. She did not remember the identification of previous cylinders. She stated that she has not brought the receipt of present cylinder in question. She had not noticed the S. No. of her cylinder and therefore, could not tell the S. No. of her cylinder. She denied the suggestion that she made incorrect identification of cylinder in the absence of verification of the S. No. or that all the cylinders being supplied to the consumers look alike in shape but carry a distinct identification numbers. She admitted the suggestion that the other cylinders which were supplied to consumers may also be broken during the transport and delivery to consumers.

2) ASI Ishwar Singh is the duty officer, who was examined as PW-2 and he



registered and identified the FIR No. 264/15 which is Ex. PW-2/A & made the endorsement on the rukka which is Ex. PW-2/B and issued certificate U/s 65B of Indian Evidence Act. The witness was not cross-examined despite having given the opportunity.

3) PW-3 ASI Surender Singh is investigating police official, in whose presence recovery of stolen gas cylinder was effected. He claimed that in the presence of JCL, the JCL kishan singh got recovered Gas cylinder make indane from his house i.e. A-48, Bharat Vihar, Chandan vihar, Delhi. The witness was not cross-examined despite having given the opportunity.

4) PW-4 Ct. Laxman is another investigating police official, in whose presence recovery of stolen gas cylinder was effected. He claimed that in the presence of JCL, the JCL kishan singh got recovered Gas cylinder make indane from his house i.e. A-48, Bharat Vihar, Chandan vihar, Delhi. The witness was not cross-examined despite having given the opportunity.

5) PW-5 Ct. Roshan Lal is investigating police official, who accompanies the IO at the spot and witnessed the arrest proceedings of accused. The witness was cross-examined but nothing material came out in his cross-examination.

6) ASI Sunil Dutt is the 2nd IO in the present case, who was examined as PW-6. He deposed that on 05.04.2015, he was posted at PS Nihal Vihar as HC. On that day, investigation of the present was marked to him. He prepared the site plan at the instance of the complainant which is already Ex. PW-5/B. He recorded the statement of witnesses. He made the efforts to search the accused and case property but no clue was found. On 18.04.2015, he received an information from HC Manoj that the present accused was arrested in another FIR No. 305/15, PS Nihal Vihar and he disclosed his involvement in the present case. On 19.04.2015, he arrested the accused vide arrest memo, which is already Ex. PW-5/A. The accused pointed the place of occurrence vide memo, which is Ex. PW-6/A. The accused produced before the court and he was sent to JC. He recorded the statement of witnesses and prepared the charge-sheet. The witness was correctly identified the accused. During his cross-examination, he stated that the



complainant did not provide any proof of ownership of the stolen property.

7) Sh. Tilak Singh, is the first IO in the present case, who was examined as PW-7. He deposed that on 04.04.2015, he was posted at PS Nihal Vihar as SI. On that day, he has received DD No. 38A. Thereafter, he along with Ct. Ramesh reached at the spot i.e. A-37B, Shiv Vihar Chander Vihar, where complainant Smt. Parsinder Kaur met him and interrogated her and she told him that she will give her statement after coming to the PS. Thereafter, he along with Ct. Ramesh came to PS. After some time, thereafter, at about 12.10 a.m., on 05.04.2015, the complainant came to PS. He recorded her statement which is already Ex. PW-1/A. He had prepared the rukka which is Ex. PW-7/A and thereafter, rukka was handed over to Duty Officer for registration of FIR. After registration of FIR, investigation of the present case was assigned to other IO/HC Sunil Dutt. In his cross-examination, the witness stated that nothing was recovered in his presence.

8) Sh. Mukesh Tanwar was examined as PW-8 who brought admission form of the accused which is Ex. PW8/A , whereby the DOB of accused is 17.02.1997. The witness was cross-examined but nothing material came out in his cross-examination.

9) HC Manoj Kumar was examined as PW-9. He deposed that on 18.04.2015, he was posted at PS Nihal Vihar as Ct. On that day, he along with Ct. Laxman & Ct. Surender had apprehended the accused Harmandeep and JCL Kishan Singh Bichhi in FIR No.305/15. During interrogation, accused Harmandeep & JCL Kishan Bicchi revealed their involvement in case FIR No. 264/15, PS Nihal Vihar. During the investigation, a cylinder of Indian Company was recovered from the house of the accused Kishan Singh Bichhi. Thereafter, he handed over the concerned photocopy documents i.e. seizure memo & disclosure memo of FIR No. 305/15 regarding the recovery to the IO of the present case. Both memos are already Mark-A & B. In his cross-examination, he admitted that no recovery was effected from the possession of the accused Harmandeep.



3. Thereafter, statement of accused U/s 313 of Cr.P.C. was recorded, wherein all the incriminating facts were put to the accused persons. The accused stated that he has been falsely implicated in the present case and he is innocent. Accused opted not to lead defence evidence.

4. This Court has heard the arguments through video conferencing(Cisco webex) and perused the record.

It is pertinent to mention here that it has been held in case of **Sadhu Singh V/s State of Punjab 1997(3) Crime 55** the Hon'ble Punjab & Haryana High Court :-

“In a criminal trial, it is for the prosecution to establish its case beyond all reasonable doubts. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused.”

Admittedly, no one has seen accused Harmandeep committing theft in the house of the complainant. From the testimony of investigating police officials namely PW3 Surender singh, PW4 Ct. Laxmana and PW-9 HC Manok kumar, it is apparent that recovery of indane cylinder was effected from the house of one JCL Kishan and not directly at the instance of accused Harmandeep. It is pertinent to note that it is stated by PW-3 Asl Surender singh and PW-4 CT. Laxman that recovery was effected in the presence of relatives of JCL. However, neither the name of relative is revealed nor he was made witness to seizure memo Mark-A.

It has been alleged that the stolen gas cylinder of the complainant was recovered from the possession of the accused at his pointing out from the house of JCL Kishan. However, no public person was joined as witness at the time of apprehension of the accused or even at the time of recovery of the case property. Admittedly, the place from where the gas cylinder was recovered was a residential area, and public persons were available. Despite that, no sincere efforts was made by the IO to join the public person during recovery.



22. It has been held in "**Roop Chand V/s The State of Haryana**",1999 (1) C.L.R 69, by the Hon'ble Punjab & Haryana High Court that:-

"It is well settled principle of the law that the Investigating Agency should join independent witnesses at the time of recovery of contraband articles, if they are available and their failure to do so in such a situation casts a shadow of doubt on the prosecution case. In the present case also admittedly the independent witnesses were available at the time of recovery but they refused to associate themselves in the investigation. This explanation does not inspire confidence because the police officials who are the only witnesses examined in the case have not given the names and addresses of the persons contacted to join. It is a very common excuse that the witnesses from the public refused to join the investigation. A police officer conducting investigation of a crime is entitled to ask anybody to join the investigation and on refusal by a person from the public the Investigating Officer can take action against such a person under the law. Had it been a fact that he witnesses from the public had refused to to join the investigation, the Investigating Officer must have proceeded against them under the relevant provisions of law. The failure to do so by the police officer is suggestive of the fact that the explanation for non-joining the witnesses from the public is an after thought and is not worthy of credence. All these facts taken together make the prosecution case highly doubtful".

23. In case of "**Pradeep Narayana V. State of Maharashtra**" reported AIR 1995 Supreme Court 1930, it was held that failure of police to join witness from locality during search creates doubt about fairness of the investigation, benefit of which has to go to the accused. Similarly it was held in the case of **Kuldeep Singh V. State of Haryana 2004(4) RCR 103** and **Passi @ Prakash V. State of Haryana 2001(1) RCR 435**, that whenever any recovery in connection with the place of the commission of offence is made, public persons must be made witness.

Otherwise also prosecution could not bring on record any evidence regarding



circumstances which suggests that accused persons had reasons to believe or knowledge that property in question is stolen property. Property in question is a commodity of common use and until unless the circumstances showing that accused had at least reasons believe that it is stolen property, it cannot be said that offence under Section 411 IPC is complete. It is a well known fact that the recovered Gas cylinder is a commodity of common use. The complainant has neither provided any serial no. nor any invoice to show that the complainant is the owner of the recovered indane Gas cylinder.

6. It is well settled that it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. Therefore, on the basis of the material available on the record, the case of the prosecution becomes doubtful and the benefit of doubt certainly goes in favor of the accused. The prosecution has failed to prove its case beyond all reasonable doubts against the accused. Accordingly, taking into consideration the facts and circumstances of the case, accused Harmandeep Singh @ Harman is hereby acquitted from the charges punishable U/s 411/34 of IPC.

Announced through video conferencing(Cisco webex) pursuant to Order No. R-235/RG/DHC/2020 of the Hon'ble High Court of Delhi,
On 21st May, 2020.



(Pankaj Arora)
MM-03/West/THC/Delhi
21.05.2020