



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 276-278 OF 2022

JAGDISH ETC. APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Having heard the learned counsel for the parties, we are inclined to dismiss Criminal Appeal Nos. 276 and 277 of 2022, arising out of D.B. Criminal Appeal Nos. 1284 and 1444 of 2017, preferred by the appellants - Jagdish and Prakash, convicting them under Section 302 read with Section 34 of the Indian Penal Code, 1860 ('IPC'). However, we have acquitted the appellants - Jagdish and Prakash from the charge under Section 397 of the IPC and convicted and sentenced them under Section 392 of the IPC.

The appellants - Jagdish and Prakash were identified by Shiv Bhagwan¹, cousin brother of the deceased - Ram Chandra, who is the complainant/informant in the First Information Report (FIR) No. 35/2009 dated 06.03.2009, registered at Police Station Losal, Sikar District, Rajasthan, initially under sections 365 and 392 of the IPC. Shiv Bhagwan had, in his written report, which was marked as Exhibit P-7, stated that the deceased - Ram Chandra had recently

¹ PW-1 in Sessions Case No. 47/2015 and PW-10 in Sessions Case No. 48/2015.

bought Bolero vehicle bearing No. RJ-29 UA 261. On 05.03.2009 at about 08:30 p.m., Shiv Bhagwan had seen the deceased - Ram Chandra at the bus stand interacting with 3-4 persons, as they wanted to hire the vehicle to take them till Kuchaman. The deceased - Ram Chandra had started off with 4 persons for Kuchaman. Thereafter, the deceased - Ram Chandra did not return home at night. In the morning, Shiv Bhagwan had proceeded to the local bus stand and spoke to Durga Ram, a co-villager, who had stated that he had seen the deceased - Ram Chandra fighting with 3-4 persons at Kuchaman stand, Losal.

On 06.03.2009 at about 03:00 a.m., Bolero vehicle No. RJ-29 UA 261 was intercepted by the Ratangarh police. Constable Mani Ram² and Head Constable Rekharam³ have in unison deposed that they were on night patrol, when they saw Bolero vehicle No. RJ-29 UA 261 being driven in a rash and negligent manner. Two persons got down from the vehicle and ran away, but one of them, who was identified as the appellant - Jagdish, was caught. Appellant - Prakash, along with another person, who was later found to be a juvenile, who were in the vehicle, were detained. Blood stains were found on the back seat of the vehicle. Glasses and blood stained clothes were found and seized. The deposition of Constable Mani Ram⁴ and Head Constable Rekharam⁵ are reliable and credible. There is hardly any ground to disbelieve their version on the arrest of the appellants - Jagdish and Prakash.

2 PW-6 in Sessions Case Nos. 47/2015 and 48/2015.

3 PW-9 in Sessions Case No. 47/2015 and PW-14 in Sessions Case No. 48/2015.

4 PW-6 in Sessions Case Nos. 47/2015 and 48/2015.

5 PW-9 in Sessions Case No. 47/2015 and PW-14 in Sessions Case No. 48/2015.

On the disclosure statement of the appellants - Jagdish and Prakash, marked as Exhibit P-39 & Exhibit P-38 respectively, dead body of Ram Chandra was discovered in the old well near the bus stand, Rajpura. These facts are proven and established by Constable Shiv Bhagwan⁶ and Constable Mani Ram⁷. These facts, Shiv Bhagwan's identification of the appellants - Jagdish and Prakash in the test identification parade, and the dock identification as the persons he had seen with the deceased - Ram Chandra on 05.03.2009, establish the prosecution's against the appellants - Jagdish and Prakash, beyond doubt. Their appeals, challenging the conviction and sentence under Sections 302 read with Section 34 of the IPC, are dismissed. However, in the absence of evidence, their conviction under Section 397 of the IPC, and that too with the aid to Section 34 of the IPC, is not warranted and is contrary to law. Instead, they are convicted under Section 392 read with Section 34 of the IPC and sentenced to imprisonment of 5 years, fine of Rs. 2000/-, and in default of payment of fine, to undergo simple imprisonment of three months. The sentences will run concurrently.

However, the Criminal Appeal No. 278 of 2022 arising out of D.B. Criminal Appeal No. 1633 of 2017, preferred by the appellant - Bablu @ Balveer @ Roop Singh, in our considered opinion, has to be allowed.

The appellant - Bablu @ Balveer @ Roop Singh was not arrested when the vehicle was seized and the appellants - Jagdish and Prakash were arrested. Appellant - Bablu @ Balveer @ Roop Singh was

⁶ PW-5 in Sessions Case No. 47/2015 and PW-3 in Sessions Case No. 48/2015.

⁷ PW-6 in Sessions Case Nos. 47/2015 and 48/2015.

arrested in the present case from Gangapur City Jail on 13.05.2010, i.e. more than one year after the occurrence. Constable Shiv Bhagwan, Head Constable Rekharam and Constable Maniram in their depositions do refer to the presence of four persons in the vehicle, *albeit* the report/first information given by the complainant/informant - Shiv Bhagwan states that 3-4 persons had interacted with the deceased - Ram Chandra for booking his Bolero vehicle No. RJ-29 UA 261. Test identification parade by the complainant/informant - Shiv Bhagwan was conducted on 28.06.2010, which is more than 13 months after the occurrence. The police officers were not taken to the identification parade. Prosecution relies on recovery of a car key allegedly from Bablu @ Balveer @ Roop Singh, but this evidence must be disbelieved, as it is not the case that the vehicle key was missing, or the recovered key was matched with the vehicle. Given the divarication and divergence, we are not inclined to accept the dock identification of Bablu @ Balveer @ Roop Singh by the complainant/informant - Shiv Bhagwan, as the sole basis to uphold the conviction of Bablu @ Balveer @ Roop Singh.

We would, accordingly, give benefit of doubt to the appellant - Bablu @ Balveer @ Roop Singh, his conviction is set aside and he is acquitted. The appellant - Bablu @ Balveer @ Roop Singh is directed to be released forthwith, unless he is required to be detained in any other case in accordance with law.

We clarify that the dismissal of the appeals filed by the appellants - Jagdish and Prakash would not come in the way of their filing representation(s) for premature release/remission. Any such

representation would be considered and decided in accordance with law.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(M.M. SUNDRESH)

NEW DELHI;
FEBRUARY 22, 2023.

ITEM NO.8

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 276-278/2022

JAGDISH ETC.

Appellant(s)

VERSUS

THE STATE OF RAJASTHAN

Respondent(s)

([FOR FINAL HEARING/DISPOSAL].FOR ADMISSION and I.R. and IA
No.142248/2021-CONDONATION OF DELAY IN FILING and IA
No.142250/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
and IA No.142249/2021-EXEMPTION FROM FILING O.T. and IA
No.142253/2021-PERMISSION TO FILE LENGTHY LIST OF DATES
IA No. 99808/2022 - GRANT OF BAIL)

Date : 22-02-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. A. Sirajudeen, Sr. Adv.
Mr. Naresh Kumar, AOR
Mr. Xavier Felix, Adv.

For Respondent(s)

Mr. Nishanth Patil, AOR
Mr. Ayush P Shah, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The Criminal Appeal Nos. 276 and 277 of 2022, arising out of D.B. Criminal Appeal Nos. 1284 and 1444 of 2017 are dismissed and Criminal Appeal No. 278 of 2022 arising out of D.B. Criminal Appeal No. 1633 of 2017 is allowed in terms of the non-reportable judgment.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Non-reportable judgment is placed on the file)