

Chaman Lal Vs. the State

Chaman Lal Vs. the State

SooperKanoon Citation : sooperkanoon.com/688827

Court : Delhi

Decided On : Feb-24-1987

Reported in : 1987(2)Crimes25; 32(1987)DLT333

Judge : Malik Sharief-ud-Din, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392 and 411; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 100

Appeal No. : Criminal Appeal No. 109 of 1986

Appellant : Chaman Lal

Respondent : The State

Advocate for Pet/Ap. : B.G. Singh and; R.P. Lao, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) The appellant was convicted and sentenced to undergo R.I. for five years and a fine of Rs. 100.00 under sections 392/34 IPC. In default of payment of fine he was sentenced to undergo further R.I. for one month. His accomplice, one Kailash appellant in Criminal Appeal No. 103 of 1986 was also sentenced to undergo similar sentence under sections 392/34 IPC. He was, however, additionally convicted and sentenced to seven years' R.I. and to a fine of Rs. 200.00, in default

of payment of fine to undergo further R.I. for two months under section 397 IPC.

(2) Bawa Gurcharan Singh argued the case of the appellant, Chaman Lal, while counsel for second appellant namely Kailash did not appear though the case was adjourned as part heard till today. In so far as the case of the appellant Kailash is concerned, Mr. R.P. Lao in the absence of the counsel for the appellant has very fairly taken me through the entire record.

(3) The case of the prosecution is that on 16/01/1985 the complainant Ram Sahai at about 10.30 Pm had gone to contact one Baij Nath at Chandni Mahal with a view to collect some cereals in regard of his avocation. Earlier in the day. Ram Sahai failed to deliver the same to him as he had left the shop due to indisposition and his servant had closed the shop early. Ram Sahai complainant did not know the actual location of the house of Baij Nath though he was aware that Baij Nath is residing in Chandni Mahal. After disembarking from the three-wheeler helmet a person whom he described as dark complexioned, 5' ft. tall and aged between 20 to 22 years. He also stated that the said person was wearing a Jersey with stripes and a trouser of black colour. On enquiry from the said person about the house of Baij Nath he is alleged to have advised him to go to the adjoining street, it is alleged that the moment he took a turn to that street the said person came and caught by the seller. It is also alleged that the said person took out a razor and at the point of inflicting an injury asked him to hand over whatever he was carrying on his person. It is further alleged that another person with dark complexion, well-built body, 20 years of age and 5' ft. height joined him and these persons then robbed him of his wrist watch of Ricoh make and a sum of Rs. 500.00 as well as one membership slip which he was carrying in his pocket. This the appellant is said to have done by putting the complainant in fear of death.

(4) At about 12.05 Am of the same night, S.I. Punnu Ram Along with S.I. Jai Ram, head constable, Ram Chander, Raj Singh, Satish Kumar and Satyawar constables visited the scene of incident. It is alleged that a secret information at this stage was received pursuant to which they all went towards Delite Cinema and they found a number of persons sleeping in the Verandah. Kailash on seeing the police party made an attempt to runaway but on the pointing out of the

complainant he was apprehended and Ricoh watch Ex. P-1 was recovered from his person. It is further said that his disclosure statement was recorded and consequent to that statement held the party to the house of Chaman Lal appellant and on his search Rs. 500.00 of the denomination as given in the F.I.R. and one razor as also a slip belonging to the complainant were recovered from his person. This slip was in respect of membership fee of Rs. 20.00 paid by the complainant to Delhi Patri Viyapar Mandal.

(5) It would be noticed that 8 witnesses were examined at trial. Ram Sahai complainant had supported the prosecution case and he has partly been corroborated by PW1 Baij Nath in so far his business relations with him are concerned. Verinder Parkash PW3 has identified the seized wrist watch as belonging to Ram Sahai. He is his nephew. There is otherwise no dispute in respect of the ownership of the wrist watch as I find the accused Kailash has not owned it. Subhash Chopra PW6 has proved this slip Ex. PW6/A for a sum of Rs. 20.00 as one issued by him in favor of Ram Sahai. Jai Ram S.I. PW7 and S.I. Punnu Ram PW8 are witnesses in respect of the arrest of the accused, recovery of watch Ex. P-1 from Kailash and the disclosure statement made by him and also to the recovery of razor Ex. P-2, currency notes of Rs. 500.00 and the receipt Ex. PW6/A from the possession of the appellant S.I., Jai Ram has further testified that Kailash was interrogated in the presence of persons who were sleeping in the verandah and that at the time of recovery from the appellant Ram Sahai complainant did not enter his room and was standing outside the gate. Both the witnesses PW7 and PW8 have admitted that no-body present in the Verandah at the time of arrest of Kailash nor from the neighborhood of the appellant were joined in the investigation. The case of the appellant and his co-accused is of denial. The appellant has, however, added that when he was taken to the police station, they demanded Rs. 500.00 from him which he paid to them through his brother Surinder and that he was falsely implicated in this case.

(6) I have carefully considered the arguments advanced and have also gone through the record. The case of the prosecution is that Kailash was arrested in pursuance of a secret information and at that pointing out of Ram Sahai PW2 complainant in the case. Ram Sahai has not supported the prosecution in respect

of the fact that he pointed out towards Kailash. I am making a reference to this fact for one important reason that there has been no test identification parade in this case. Admittedly, the two persons who are alleged to have robbed PW2 Ram Sahai were; not known to him and admittedly none of them was apprehended at the time of commission of offence. Under these circumstances it was necessary to conduct a test identification parade and the identification of the accused persons for the first time in court in law is of no value.

(7) The second important factor that straight way goes to support the doubt that appellant has wrongly been implicated is the point of time at which Kailash is said to have made disclosure statement about the involvement of appellant. I am not in a position to understand in the first instance as to how a disclosure made by a co-accused can be used as substantive evidence against an accomplice. One can understand a discovery being made in pursuance of a confession made by an accused person as the confession of the accused to that extent is admissible. Under the circumstances this will not amount to a disclosure statement in law. This at the most is a piece of information which the police has procured from the co-accused. In any case the court is told both by PW7 and PW8 as also PW2 that this statement of Kailash was recorded at the site of Delite Cinema soon after he was arrested but this is characterized as a lie by PW5 Constable Deep Chand who has stated that this statement of Kailash was recorded on 17/01/1985 at 10.30 AM. It is obvious therefore that if Deep Chand PW5 is speaking the truth then the recovery made from the appellant is stage-managed because it could not then be recovered on the same night. If PW2, 7 and 8 are speaking the truth then one fails to understand as to how Deep Chand was made to sign this statement even though he was not present on the spot. If the Investigating Officer can falsify a document like this, it is anybody's guess that he can go to any extent.

(8) In any case, it is admitted that while conducting search of the appellant no public man, nor even a neighbour was involved. It is difficult for me to understand as to why it was so. Section 100 of Criminal Procedure Code makes it very clear that in such searches two or more public witnesses must be associated. A deliberate attempt is made to avoid the mandate of law. The court would be justified in approaching the conduct of the prosecution with great deal of suspicion.

(9) Furthermore, in the present case the investigating officer also has not complied with the provisions of section 166 Criminal Procedure Code. It is an admitted fact that the recoveries have been made within the jurisdiction of a different police station. These are made by an officer who does not belong to the police station where the appellant resides. In law investigating officer was bound to report the matter of seizure to the concerned police station. It has failed to make a record of the search in the books of that police station and has failed to inform the Magistrate about it. In the circumstances of this case since the search was conducted within the jurisdiction of a police station different than the one in which the case was registered and was conducted by a police officer of the station where registration was done, the provisions of section 166 Criminal Procedure Code had to be followed. Non-compliance of this provision also renders the investigating as suspect.

(10) The case of the prosecution is that razor was actually used by Kailash. It is meaningless to recover it from the appellant Chaman Lal against whom no such allegation was made. The seizure of currency notes which are not identifiable can in no way involve the appellant with the commission of crime. Under the circumstances of this case and the manner the investigating officer has tried to reach the appellant and conduct search, the recovery of the slip Ex. PW6/A from the appellant cannot be trusted. I am, therefore, of the view that the case against the appellant is totally doubtful. It is surrounded by circumstances which to my mind are absolutely suspicious. The search is indirect disregard of the provisions of law. I am, therefore, of the view that there is no case against the appellant, Chaman Lal. His appeal is allowed and conviction and sentence set aside and he is acquitted.

(11) In so far as the appellant Kailash in Cr.A. 103/86 is concerned, there has been no test identification parade of this man. All that the complainant had given in the F.I.R. was his description and it is nowhere stated that he was known to him. No weapon of offence has been recovered from him. The fact, however, remains that the wrist watch of Ricoh make belonging to the complainant has been recovered from his possession. Admittedly it is not owned by Kailash and the prosecution has led evidence to show that this watch belongs to the complainant. It was, therefore,

for Kailash accused to account for its possession and explain the same. He has failed to do so. He is, therefore, liable to be convicted under section 411 Indian Penal Code though there is no case either under section 397 or section 392/34 Indian Penal Code made out against him. The conviction and sentence of appellant Kailash under sections 397 and 392 Indian Penal Code are set aside. His appeal is dismissed with the modification that Kailash, appellant, is convicted under section 411 Indian Penal Code and is sentenced to undergo three years' rigorous imprisonment. Against this three years' period, he is entitled to get a set off of the detention period he has already suffered either as an under-trial or as a convict.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com