

HIGH COURT OF KARNATAKA**Bench: Justice Sreenivas Harish Kumar and Justice Vijaykumar A. Patil****Date of Decision: 22 January 2024**

Criminal Appeal No. 1164 of 2017

State of Karnataka By Subramanyapura Police Station,**Bengaluru****...Appellant****Versus****Imran @ Mady Irfan S/O Anwar Naznuunisa W/O Anwar****...Respondents****Legislation:**

Sections 392, 109, 413 of the Indian Penal Code (IPC)

Subject:

Appeal against the acquittal of the respondents in a robbery case involving the snatching of a Mangalya Chain.

Headnotes:

Criminal Appeal – Acquittal in Robbery Case – State challenges the acquittal of accused by the Sessions Court for offences under IPC Sections 392, 109, 413 – Appeal dismissed due to lack of corroborative evidence and discrepancies in witness testimonies. [Para 1, 22-23]

Prosecution's Case – Incident of robbery on 08.02.2012 involving snatching of a Mangalya Chain – PW-1 (complainant) identifies accused and chain – Issues with her evidence and failure of police to conduct an identification parade lead to doubts about the identification of the accused. [Para 2, 13-14, 15]

Witness Testimony – Inconsistencies and contradictions among witnesses (PW-2, PW-3, PW-5, PW-7) regarding recovery of stolen items and identification of accused – Lack of reliable independent witnesses – Sessions Court’s skepticism on the credibility of witness testimonies upheld. [Para 7, 11, 17, 19, 21]

Evidence of Police Officials – Sessions Court finds discrepancies in the evidence provided by the police officials (PW-6, PW-9, PW-11) – Lack of corroboration with other evidence and witnesses – Failure to establish conclusive recovery of stolen items and involvement of accused. [Para 22-23]

Legal Principles – Importance of corroborative and consistent evidence in criminal cases – Need for clear identification of accused, especially in cases of robbery – Significance of conducting identification parades for establishing the identity of accused. [Para 14, 17, 21, 23]

Decision – Dismissal of State's appeal against acquittal by the High Court – Upholding of Sessions Court’s judgement due to gaps in prosecution's evidence and unreliable witness testimonies – Benefit of doubt accorded to the accused. [Para 23]

Referred Cases: None.

Representing Advocates:

For Appellant - Sri B.N. Jagadish, Additional State Public Prosecutor

For Respondents - Sri C.B. Abdul Sab, Advocate

JUDGMENT

This appeal is filed by the State assailing the judgment of acquittal passed by the Sessions Court dated 28.02.2017 in S.C.No.1111/2012 on the file of LII Addl. City Civil & Sessions Judge, Bengaluru (CCH-53).

2. The case of the prosecution is that on 08.02.2012 at about 08.45 p.m. one Smt.H.N.Indiramma PW-1 was proceeding on 1st cross, Sneha Colony, Chikkalasandra, Bengaluru, at that time accused No.1 came

near her on the pretext of asking address and tried to rob the Mangalya Chain. At that time, the complainant held the chain tightly, the chain was broken and the accused Nos.1 & 2 taking that broken piece, fled that place on the motorbike. It is the further case of the prosecution that accused Nos.4 & 5 abetted accused Nos.1 & 2 to commit the offence and they are the habitual receivers of the stolen property and accordingly they have received the robbed article from accused Nos.1 & 2 knowing fully well that it is a stolen property.

3. PW-1 lodged the complaint at Ex.P1 and based on the said information, FIR was registered in Crime No.51/2012 by the Subramanya Pura Police Station. During investigation, the Police arrested the accused and based on their voluntary statement, incriminating materials were recovered. On completion of investigation, charge sheet was filed against accused Nos.1 to 4 for the offences punishable under Sections 392, 109 & 413 of IPC.

4. The prosecution, in order to prove the guilt of the accused, examined 11 witnesses as PW-1 to PW-11 and produced 74 documents as Exs.P-1 to P-74. The Sessions Court, on appreciation of evidence available on record, has come to the conclusion that the prosecution has failed to prove the case beyond reasonable doubt and proceeded to acquit accused Nos.1, 2 & 4 [Accused No.3 Anwar has died, hence, proceedings abated before the Sessions Court]. Being aggrieved by the judgment of acquittal, the State has preferred this appeal.

5. Heard arguments of Sri.B.N.Jagadish, learned Additional State Public Prosecutor for the appellant and Sri.C.B.Abdul Sab, learned counsel for respondents/accused.

6. Sri.B.N.Jagadish, learned Additional State Public Prosecutor submits that the Sessions Court committed grave error in appreciating the evidence available on record resulting in acquittal of the accused. It is submitted that the Sessions Court failed to appreciate the evidence of PW-1, the complainant, who narrated the incidence of robbery of her Mangalya Chain by accused Nos.1 & 2. She has also affixed signature on Ex-P2, the

spot mahazar, which was drawn in her presence and identified the accused persons, who had snatched the gold chain, as well as the broken chain, in the photograph at Ex.P-3. The Sessions Court failed to appreciate the fact that the defence failed to disprove PW-1's evidence during cross-examination. The evidence of PW-1 is consistent with regard to identification of the accused, identification of recovered article and identification of place of occurrence, as indicated in Ex-P2.

7. It is submitted that the Sessions Court committed error in appreciating the evidence of PW-2, who is a panch witness to Ex.P-5 - mahazar, drawn while recovering the Yamaha bike and car from the residence of accused No.1. The said witness has supported the case of prosecution by identifying the mahazar at Ex.P-2 and his signature. It is further submitted that the Sessions Court failed to appreciate the evidence of PW-5, who is the panch witness to Ex.P-6 - the recovery mahazar; the said witness has clearly stated that he along with another person went to police station and the police requested them to act as panch witnesses and took him to Tamil Nadu and it was informed that accused Nos.1 & 2 had committed the crime. He further says that accused Nos.1 & 2 went to one person and requested him to return back the ornament, which they had given to him and accordingly he returned the article, which was seized by Police by drawing the mahazar, which is marked as Ex.P-6 and his signature is Ex.P-6(a). The said witness has supported the case of prosecution for recovery of ornament from one Nadeem Ahmed - PW-7 at the instance of accused Nos.1 & 2. The said witness has also identified the accused. It is also submitted that on appreciation of evidence of PWs-1, 2, 5, 6 & 7 along with the evidence of Investigating Officer, it is evident that the prosecution has established the guilt of the accused beyond all reasonable doubt. If the evidence of prosecution witnesses are read together, it corroborates each other and nothing was elicited during cross-examination of the prosecution witnesses. However, the Sessions Court has come to the conclusion that there are material discrepancies in the evidence of prosecution and the prosecution has not adduced any independent evidence and proceeded to acquit the accused. Hence, he seeks to allow the appeal by setting aside the impugned judgment by convicting the respondents-accused Nos.1, 2 & 4.

8. Per contra, Sri.C.B.Abdul Sab, learned counsel for respondents/accused supports the impugned judgment of the Sessions Court and submits that there are material contradictions in the evidence adduced by the prosecution and the prosecution has failed to prove the charges leveled against the accused beyond all reasonable doubt. It is submitted that PW-5, in his evidence, has deposed that on enquiry by the Police, the accused Nos.1 & 2 have informed that they have given the robbed chain to one person and if they were taken, they would show the said person and accordingly the Police took him and accused Nos.1 & 2 and then accused Nos.1 & 2 have requested one person to return the gold ornaments, accordingly, he returned five gold ornaments, which was recorded in the mahazar Ex.P-6. However, PW-7 Nadeem Ahmed, in his evidence, has deposed that police have brought accused No.1 to him, and 2-3 months prior to that, the father of accused No.1 had come and given the ornaments and collected Rs.2,00,000/- from him, and he has returned ornaments to the Police. There is a material contradiction between the evidence of PW-5 and PW-7. It is submitted that PW-5 in his cross-examination has admitted that he was standing near the board which is adjacent to the mahazar place, the accused went to one person's house and called the person out of the house and the mahazar was drawn there. The said admission clearly indicates that PW-5 was not present at the time of drawing the mahazar and it creates doubt about his evidence. It is further submitted that the witness have not identified the accused, the prosecution has not conducted the test identification parade. PW-1 has not given any description of the person, who snatched the chain, hence, non-conducting of test identification parade resulted in not establishing the identity of the accused. Hence, he seeks to dismiss the appeal.

9. Perused the memorandum of appeal and entire evidence available on record.

10. The Sessions Court has acquitted the accused on the ground that PW-1 in her cross-examination did not say the features of the assailants and only for the first time in the Court she has deposed about the injuries caused to her and taking treatment in Maharaja's Agarsen Hospital and she has not given any description of the chain, chain size etc., such an evidence amounting to an improvement is not admissible, and the police have not conducted test identification parade of accused Nos.1 & 2, hence, her

evidence is doubtful. PW-10 has not supported the case of prosecution and in the cross-examination he has admitted that the accused have not committed the offence of robbery and police have falsely implicated the accused in the case. The Sessions Court has disbelieved the evidence of PW-3, a witness to the spot mahazar at Ex.P-2. In the cross-examination PW-3 has admitted that he is working as a Mason and the Police have mentioned him as a Security Guard, and is a resident of Itamadu not Chikallasandra. His evidence is restricted to spot mahazar and no much credence can be attached. The Sessions Court has disbelieved the evidence of PW-2, a witness whom the photo of the motorbike is confronted for having seized the motorbike and car at Ex.P-5, on the ground that in cross-examination of PW-2 he has admitted that he does not know who has written the mahazar, he did not say who has shown the car, hence, held that his evidence is not firm and not worthy to believe and it does not corroborate the case of the prosecution with regard to Ex.P-5 and with regard to identification of alleged car being used by the accused persons for committing robbery and for dealing with robbed material objects.

11. The Sessions Court has disbelieved the evidence of PW-5, who is a panch witness to seizure of articles under mahazar at Ex.P-6, on the ground that PW-5 was not present at the time of drawing the mahazar and the mahazar was conducted in the house shown by the accused and he saw the material objects after seizure, Sessions Court held that he is a stock witness as he is already a witness in another case of Subramanya Pura Police Station. The Sessions Court has disbelieved the evidence of PW-7 on the ground that he has stated in his evidence that the Police and accused No.1 came to his house and 2-3 months prior to that, the accused No.3 gave 5 gold ornaments and taken Rs.2,00,000/- and he came to know those articles are stolen articles only when the accused asked him to return those ornaments. He says that the police seized the said ornaments under mahazar Ex.P-6 and he identifies photo of the ornament as Ex.P-3 and he further deposes that he would identify accused Nos.1 & 3 only, hence there is a material contradiction in the evidence of PW-5 and PW-7. The Sessions Court, on appreciation of evidence of PW-4, has come to the conclusion that he has deposed that he knows accused Nos.1, 4 & 5 and about 5-6 months back accused by name Mudabir had given one gold chain to him. After pledging the said gold chain weighing 19 grams with Muthoot finance for Rs.39,000/- he gave the amount

to the accused, however said Mudabir is not an accused in the present case and he appears to be a stock witness and his evidence is not free from doubts.

12. The Sessions Court on appreciation of evidence of Exs.P-6, P-8, P-10 & P-11 has held that the entire case of the prosecution is based on the voluntary statement of accused and the said confessional statement being made before the Police, is inadmissible and no credence can be attached to such confession as the prosecution has failed to prove the recovery of robbed article, motorcycle and the car used for the commission of crime. The Sessions Court has recorded the finding that there are material discrepancies and contradictions in the evidence adduced by the prosecution and no independent witnesses have been examined by the prosecution to corroborate with the mahazar witnesses. Hence, the prosecution has failed to prove the case beyond all reasonable doubt.

13. If the entire evidence is re-appreciated, it is found that PW-1, who is the complainant, has deposed that on 08.02.2012 around 8.45 p.m. she was going to her house from her son's house, at that time, near the house of an advocate, one person came and asked the address of MGM Apartment and she told that she was not aware of the same. At that time, another person came on a motor cycle and as she was about to suggest another person to show the address, the first person robbed the chain from her neck, immediately she held her Mangalya Chain tightly. It was cut into two pieces and one piece was taken by the accused, who fled on the motor cycle. The public, who gathered there, tried to catch the accused, but could not. She had went to the police station and lodged a complaint which is marked as Ex.P1 and her signature as Ex.P1(a). Thereafter, police came to the spot and drew up the spot mahazar. The same is marked as Ex.P2 and her signature as Ex.P2(a). It is further deposed that after three months, in the month of May, police called her and informed that her Mangalya Chain is found. Thereafter, she went to the police station and identified the chain. When the Police showed the accused, she identified them. The persons who came on the motor cycle and snatched her chain were present in the police station. In the Court also, she identified them. The broken portion of the chain was got released. She identified the broken portion of the chain and the motor cycle shown in the photo at Ex.P3 and Ex.P4. In the cross-examination, she has admitted that the complaint was written by her husband, she has signed the same and chain was snatched near the circle and near the advocate's

residence and at that time, street light was on. It was suggested that at the request of the complainant, PW-3 has come to the Court. The deponent has stated that he has signed as witness for the spot panchanama, hence, they have requested him to come to the Court. It was suggested that the said road is a busy road. However, it is answered that it is not so busy. It was admitted that immediately after the incident, she fell down and public brought her home and thereafter, she informed the incident to her husband and he called the police. Thereafter, police came and verified the place and on the next day, they came and drew the spot mahazar. It was admitted that first time in the Court she informed that she was taken to the hospital immediately after the incidence. It was admitted that she has not written in the complaint with regard to she visiting the hospital. She has denied the suggestion that she has not stated the description of the accused in the complaint.

14. The Sessions Court has disbelieved the evidence of PW-1 on the ground that in the cross-examination, she has improved her case by admitting that she has not disclosed in the complaint about going to the hospital, taking treatment and further, she has admitted that the place of incident is a very busy place and she has not given any description of chain. The Sessions Court has held that the improvements made by PW-1 is inadmissible in evidence and prosecution has not conducted identification parade of accused Nos.1 and 2 as per Law. On perusal of the evidence and cross-examination of PW-1, comparing with the Ex.P1, the complaint, it is evident that PW-1 has narrated the incident that took place on 08.02.2012 at 8.45 p.m. She has shown the place of occurrence and mahazar was drawn. She has given some description of the accused persons and thereafter, she has identified the accused during the course of trial. She has also identified and pointed out that when accused No.2 snatched the chain, accused No.1 was on motor bike. She has further identified the photograph of the snatched chain which is shown in photograph at Ex.P3. Similarly, she has identified the motor bike shown in photograph at Ex.P4. She has also admitted that she is a signatory to spot panchanama at Ex.P2 along with one Rajagopal.

15. If the evidence of PW-1 corroborating with the evidence of PW-3, Ex.P1, Ex.P2, Ex.P3 and Ex.P4, the evidence of the said witness can be believed to the extent of identification of the spot of occurrence of crime, identification of the broken Mangalya Chain. Admittedly, the deponent has not given full description of the accused in the complaint and further she said that

she had fallen down and public took her to her house. This creates doubt with regard to identification of the accused by PW-1. The deponent has admitted that immediately after the incident, she was taken to the hospital and the said aspect is not written in the complaint, which creates further doubt about the credibility of the witness.

16. PW-2 Sri.Mallesha is the witness for the seizure mahazar at Ex.P-5, he says that on 29.04.2012, the Police have called him to the police station and thereafter the police took him, Mudabir and Imran to their house, where black colour Santro Car and black colour bike was parked, the police seized the car and bike and he has signed the mahazar at Ex.P-5. In the cross-examination, he admitted that he does not remember the date of the incident, he does not remember the registration number of the vehicles and did not know who has written the mahazar. The Sessions Court has disbelieved his evidence as it is not a firm statement, this Court do not find any infirmity in the said conclusion of the Sessions Court.

17. The prosecution has examined Sri.Rajagopal as PW-3, who is the panch witness to the spot mahazar at Ex.P-2. He says that as per the request of the police he has gone to the spot and police informed that this is the place of occurrence of the crime and in his presence spot mahazar Ex.P-2 is conducted, his signature is Ex.P-2(b). In the crossexamination he is consistent with the evidence. His evidence corroborates with the evidence of PW-1 victim, who is also a signatory to Ex.P-2 spot mahazar. The evidence of PW-3 can be believed to the extent of identification of spot of occurrence of crime.

18. The prosecution has examined PW-4 Mohammad Yousuf, he has stated that he knows accused Nos.1, 4 & 5 and one month back accused Mudabir gave one gold chain to him and he pledged the same with Muthoot finance for a sum of Rs.39,000/-, and the gold chain was weighing 19.01 grams and 4-5 months thereafter when the police visited along with accused No.1, he took them to Muthoot finance and gave the chain. He has identified the chain in photograph at Ex.P-3, also identified accused Nos.4 & 5 in the Court. PW-4 has been cross-examined. The Sessions Court has observed that the reference of the said witness with regard to Mudabir stating as an accused is not the accused in the present case. The Sessions Court held that witness is a stock witness and cannot be believed. The evidence of this

witness is that Mudabir handed over the gold chain to him and not the accused in the present case. Hence, his evidence is not worthy to be believed.

19. The prosecution has examined PW-5 Sri Hemanth Kumar, who is the witness to recovery mahazar at Ex.P-6. He says that on 08.05.2012, he along with his friend went to the police station to enquire about the passport status, at that time the police showed accused Nos.1 & 2 and informed that they are the culprits in crime and requested them to come to Tamil Nadu to assist them in drawing the mahazar and requested to act as panchas. He says that accused Nos.1 & 2 told that they along with their parents have handed over the stolen gold ornaments to PW7 Nadeem Ahmed. He says, accordingly they went to Ambur in Tamil Nadu with Police and five ornaments were seized by drawing the seizure mahazar at Ex.P-6, he identified his signature, the said ornament Ex.P-3 is also identified before the Court. In the cross-examination, PW-5 has admitted that he was standing nearby the place where the mahazar was drawn and the accused went near the house of one person and called the inmates of the house and thereafter the police drew up the mahazar in that house, and he saw the ornaments seized and also other persons were present. The evidence of PW-5 cannot be believed as he has admitted that he was standing near the board where the mahazar was drawn and it is not clearly deposed that mahazar was drawn in his presence. Hence, his version is doubtful.

20. The evidence of PW-7 is that on 08.05.2012 the police along with accused No.1 went to his house. About 23 months prior to the date of examination, accused No.3 gave 5 gold ornaments on the pretext that he needs money to construct the house and accordingly he paid Rs.2,00,000/-. Since the accused No.1 asked to return the gold ornaments, it was handed over to the police and they seized the same under Ex.P-6 and he identifies the ornament in photograph at Ex.P-3.

21. On comparative reading of evidence of PW-5 and PW-7, it appears that there are contradictions. It is the case of the prosecution that based on the voluntary statement of accused, the police recovered the gold ornaments from PW-7. PW-5 has specifically deposed that he along with accused went to Ambur in Tamil Nadu, however, PW-7 deposed that accused No.1 came along with the police, hence, the evidence of PWs-5 & 7 is not worthy to be believed. In addition, PW-4 in his evidence has stated that about

5-6 months back accused Mudabir gave one gold chain to him weighing 19.01 grams, which was pledged in Muthoot finance and he also identifies the said chain in Ex.P-3. Hence there is a material contradiction between the evidence of PW-4, PW-5 and PW-7 and the prosecution has failed to prove the recovery of the gold chain from the accused as there is an inconsistency in the evidence available on record.

22. PW-6, Police Sub-Inspector has stated that PW-1 lodged the complaint and based on her information, FIR in Crime No.51/2012 was registered, he has conducted spot mahazar, and on credible information, he went to Hindupura cross, Andhra Pradesh and apprehended accused Nos.1 and 2 and later, the accused Nos.3 and 4 were produced by his staff. It is stated that based on the voluntary statement of accused, the investigation continued and recoveries were made. PW-11, Manjunath S., PSI has stated that based on the voluntary statement of accused, he went to the house of accused No.1 and seized motor bike and car in the presence of panchas. PW-9, Sri.Balegowda, Investigating Officer speaks about the investigation and filing of the charge sheet.

23. The Sessions Court has considered the evidence of police officials and recorded the finding that there are material discrepancies in the evidence of the prosecution and evidence of the official witnesses is not corroborated by other witnesses. The Sessions Court has also come to the conclusion that there is no corroborative and clinching evidence regarding recovery of bike, car and recovery of ornaments and the prosecution has failed to prove the case beyond all reasonable doubts and the very victim has not identified the accused Nos.1 and 2. Further, recovery of Mangalya Chain at Ex.P5 is not fully proved. Therefore, it is a fit case to give the benefit of doubt to the accused person. This Court, on re-appreciation of evidence of the official witnesses and other evidence on record, is of the considered view that the Sessions Court is justified in coming to the conclusion that there is no corroboration between the evidence of official witnesses and other witnesses. There is no reason to disbelieve the reasoning adopted by the Sessions Court and the finding recorded by the Sessions Court is neither contrary to the evidence on record nor perverse, calling for interference in the appeal filed by the State against the impugned judgment of acquittal.

Accordingly, the appeal is ***dismissed***.

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