Mohd. Abdul Hafeez vs State Of Andhra Pradesh on 23 November, 1982

Equivalent citations: AIR1983SC367, 1983CRILJ689, 1982(2)SCALE1064, (1983)1SCC143, AIR 1983 SUPREME COURT 367, 1983 (1) SCC 143, 1983 CRILR(SC MAH GUJ) 26, (1983) 1 APLJ 57.1, 1983 UJ (SC) 145, 1983 CRI APP R (SC) 25, 1983 SCC(CRI) 139, (1983) 1 CRILC 274, (1983) GUJ LH 340

Bench: D.A. Desai, R.B. Misra

JUDGMENT

1. Appellant Mohd. Abdul Hafeez was tried by the Metropolitan Sessions Judge, Hyderabad along with three others for having committed an offence under Section 392 read with Section 34 of the Indian Penal Code who by his judgment and order dated April 30, 1979, convicted all the four accused and sentenced each of them to suffer rigorous imprisonment for three years. We are concerned in this appeal with original accused 1 who was charged substantively for the offence under Section 392, I.P.C. and was convicted and sentenced as hereinabove mentioned.

2. Briefly stated, the prosecution case is that PW. 1 S. Satyanarayana a young man aged about 19 years boarded a bus on route No. 52 on his way to Charminar Cross Roads from where he was to proceed to Ramnagar. After the bus started, the conductor informed him that the bus would not stop at Charminar Cross Roads, whereupon PW. 1. S. Satyanarayana alighted from the bus and started walking back towards the bus stop from where he had boarded the bus. Original 15 accused 2 and 3 also simultaneously alighted from the bus and followed him. They overtook him and started giving fist blows. In the meantime an auto rickshaw bearing No. ADT 4196 driven by original accused 4 reached the spot and stopped nearby. Original accused 2 engaged PW. 1 S. Satyanarayana and original accused 3 pushed him inside the auto rickshaw. At that time the present appellant accused 1 was found sitting at the rear portion of the auto rickshaw. Original accused 4 started the auto rickshaw and drove in the direction of Nayapul. During the course of journey original accused 2 snatched a ring MO. 1 from the finger of PW. 1 and the present appellant removed cash worth Rs. 100/-from the pocket of PW. 1. Thereafter the auto rickshaw was stopped near the petrol pump and present appellant and original accused 2 and 3 pushed out PW. 1 from the auto rickshaw and simultaneously he was threatened that if he complained to the police his bones would be broken. Original accused 4 drove away the auto rickshaw. PW. 1 S. Satyanarayana proceeded towards Afzal-gunj Police Station and gave the information Ext. P/l to PW. 5 Sardar Udham Singh, the Inspector of Police who registered an offence under Section 392, I.P.C. and directed PW. 6 J. Ranga Reddy to undertake the investigation. Ultimately, present appellant and three others were chargesheeted and tried, convicted and sentenced as hereinabove mentioned. Present appellant and accused 2 and 3 preferred Criminal Appeal No. 418 of 1979 and original accused 4 preferred Criminal Appeal No. 420 of 1979 in the High Court of Judicature of Andhra Pradesh at Hyderabad. Both the appeals were disposed of by a common judgment. Both the appeals were dismissed and the

conviction and sentence were confirmed. Hence this appeal by special leave by original accused 1.

3. The evidence against the present appellant consists of two items: (i) that he was identified as the person sitting in the auto rickshaw and who removed Rs. 100/-from the pocket of PW. 1 S. Satyanarayana as stated by PW. 1 S. Satyanarayana; and (ii) that he along with original accused 2 and 3 led the police to the shop of goldsmith-cum-jeweler PW. 3 Pandurangam Kondiah from where MO. 1 ring as sold by them was recovered in the course of the investigation.

4. Turning to the first piece of evidence against the present appellant that he was identified by victim P.W. S. Satyanarayana as the person who was sitting in the auto rickshaw driven by accused 4 when the auto rickshaw pulled near the spot where accused 2 and 3 had held Satyanarayana, it must be stated that this identification is innocuous and does not furnish any evidence against the present appellant. In Ext. P-1 the First Information Report, informant Satyanarayana did not give the name of the present appellant and for that matter of none of the accused. We would not have attached much importance to the omission of non-mentioning the names of the accused in the FIR Ext. P-1 because it is distinctly possible that the victim Satyanarayana was caught unawares and may not be knowing the accused prior to the date of the incident and, therefore, may not be able to give their names but he could have at least given some description of the persons who robbed him. At any rate, he could have given some description of the present appellant who was supposed to be sitting next to him and who thrust his hand in his pocket and removed Rs. 100/-. The total absence of any such description which would have provided a yardstick to evaluate the identification of the present appellant at a later date by victim Satyanarayana would render his later identification weak but that is not the only error. Ext. P/1 clearly shows that the victim Satyanarayana did not know the names of the persons who robbed him. In such a situation ordinarily after the accused were arrested the test identification parade should have been held. It is 55 admitted that no such identification parade was held. It is only when the victim satyanarayana came to give evidence in the Court and the miscreants. Incident occurred on December 9, 1978. Evidence of Satyanarayana was recorded in the Court on April 21, 1979. There was thus a lapse of more than four months during which period it is not possible to believe that victim Satyanarayana had no occasion to see the accused. Such identification in the circumstances of the case would hardly furnish any evidence against the present appellant.

5. The next piece of evidence against the appellant is that he along with accused 2 and 3 gave information to the investigating officer that the ring MO. 1 was sold to jeweller PW. 3 Pandurangam Kondiah. Now, who gave this information leading to the recovery of this ring MO. 1 left us guessing. In examination-in-chief PW. 3 Pandurangam Kondiah stated that his jewellery shop is near Gulzar House, that in the course of his business he buys and sells ornaments and jewels. He deposed that on December 9, 1978. Accused 1 to accused 4 whom he identified in the Court, came to his shop and sold ring MO. 1 to him for Rs. 325/-. He further stated that on December 27, 1978, a Sub-Inspector of Police and some constables accompanied by accused 1 to 3 came to his shop and accused 1 to 3 asked him to produce MO.I ring which they had sold to him. He stated that he took out MO. l ring from the show case and placed it on the box and the same was attached by the Sub-Inspector of Police under Ext. P/2. Does this evidence make any sense? He says that accused 1 to 4 sold him the ring. He does not say who had the ring and to whom he paid the money. Similarly, he stated that

accused 1 to 3 asked him to produce the ring. It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when, he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person. The evidence of Pandurangam, therefore, hardly provides any incriminating evidence against the present appellant. And this jeweller does not enquire how four persons unconnected with each other came together to sell one ring and that did not arouse any suspicion in him. The jeweller is undoubtedly a purchaser of stolen property. His evidence itself would require some corroboration the circumstances of this case and none is forthcoming.

6. This was all the evidence against the present appellant and it is not sufficient to connect the appellant with the crime and the charge is not brought home to the appellant.

7. Accordingly, this appeal is allowed and the conviction and sentence of the appellant are set aside. He is on bail. He need not surrender. His bail bonds are cancelled.