

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Appeal No. S-544-SB of 2000
Date of decision : 09.09.2015**

Suresh @ Pappal **... Appellant**
versus

State of Haryana **... Respondent**

with **Crl. Appeal No. S-657-SB of 2000**

Ved @ Krishan **... Appellant**
versus

State of Haryana **... Respondent**

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Rahul Vats, Advocate
for appellant Ved @ Krishan.**

**Mr. Akashdeep Singh, Advocate
for appellant Suresh @ Pappal.**

Mr. G.S. Salwara, DAG Haryana.

ANITA CHAUDHRY, J.

Two appeals had been filed against the judgment and order dated 24.5.2000 and 25.5.2000 respectively passed by Additional Sessions Judge, Rohtak vide which the appellants had been convicted under Sections 392, 394 read with Section 397 IPC and substantively sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs. 5000/- under each head. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for one year under the defaulting clause. Appellant Ved @ Krishan was also convicted under Section 25(1-B) of the Arms Act and sentenced to undergo

rigorous imprisonment for three years along with a fine of Rs.1000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently. It was also ordered that a sum of Rs.10,000/- each was to be paid to injured Girdhari and Jawahar Lal, out of the fine recovered.

The epitome of facts which necessarily requires narration are as follows:-

On 05.04.1996, information was received by the police about robbery in a shop situated at Shori Market, Rohtak. The police reached the spot and found a person lying dead while another was lying injured. A .315 bore country made pistol and a .12 bore country made pistol were found lying near the dead and injured person. The arms were taken into police possession. The injured and dead body were shifted to the hospital.

The police recorded the statement of Girdhari Lal who narrated the sequence of events. He disclosed that at about 8:30 p.m. they were checking the cash at their shop, when four persons entered their shop and three persons were holding pistols and fourth one was armed with knife. The person holding the knife tried to snatch the bag containing cash of Rs.15,000/- from him. In the scuffle which ensued, he received stab wound on the abdomen and hand. His brother Jawahar intervened. One of the assailants, fired a shot and gave butt blow upon Jawahar. They raised alarm, which attracted the nearby shopkeepers. One of the assailants fired to scare the public. Seeing them

outnumbered, the person holding the knife and the assailant who had fired managed to escape from the spot. Two assailants carrying pistols were overpowered by the mob and were badly beaten by the irate mob.

On the statement made by Girdhari, a case was registered and investigated.

One blood stained shirt and diary with signatures of one Suresh were handed over by Mahesh to the police and the same were taken into police possession.

On 09.04.1996 the injured regained consciousness and disclosed his name as Ved @ Krishan. He told the name of his accomplice who died at the spot as Ashok @ Lala. His disclosure statement was recorded, wherein he named Suresh @ Pappal and Jai Kishan @ Namberdar as the person who were with them on that day and had run away.

On completion of formalities, final report was filed against accused Ved @ Krishan.

On 10.08. 1997 accused Suresh @ Pappal who was on police remand in some other case, was arrested in this case. He demarcated the place of occurrence.

Accused Jai Kishan was also arrested in this case. Supplementary challan was filed against them.

Charge under Section 392, 394 read with Section 397 IPC, 307 read with Section 34 IPC was framed against all the three accused. Accused Ved was additionally charged under Section 25 of the Arms Act.

Accused Jai Kishan failed to appear during trial and was declared a proclaimed offender.

The prosecution examined 23 witnesses, including complainant, injured and eye-witness.

The incriminating circumstances led by the prosecution were put to the accused in their statements under Section 313 Cr.P.C., which they denied and pleaded false implication. No evidence was led by them.

On appraisal of the evidence produced on record, the trial Court convicted and sentenced the appellants in the manner indicated above.

Dis-satisfied with the same, the above appeals have been filed by the appellants.

I have heard learned counsel for the parties and with their able assistance gone through the record carefully.

The learned Counsel for the appellants have assailed the findings of the learned trial court inter-alia on the ground that the foundation of the prosecution was laid on circumstantial evidence and the links in the chain of evidence were missing as none of the eye witnesses, PW11 Girdhari, PW12 Jawahar and PW13 Mahesh had identified the appellants.

It has been submitted on behalf of appellant Ved @ Krishan that it was a case of mistaken identity and he was falsely involved in the case. It was not disputed that he was lying injured on the spot and was taken to the hospital by the police.

Learned counsel for the appellant Suresh @ Pappal has

urged that he was not arrested at the spot and merely on the basis of disclosure statement of co-accused he had been implicated in this case. It was further urged that except for this evidence there is no evidence against the appellant which connects him with the crime.

On the other hand, learned State counsel supported the judgment of trial Court. According to him, the findings returned by the Court below were based on proper appreciation of evidence and called for no interference.

It is necessary to refer to the evidence adduced by the prosecution, which comprises of three set of witnesses, viz., (i) official witnesses (ii) complainant and eye witnesses and (iii) medical experts. The gist of their evidence is as follows:-

PW1 Shri Niwas proved the sanction order Ex.PA, PW@ Padam Parkash, Retired Inspector prepared the final report, PW3 Const. Raj Singh took the dead body to hospital for post-mortem examination, PW4 Const. Sham Lal delivered the special report of the case to higher authorities, PW5 Const. Raju prepared the scaled site plan, PW6 Const. Jagdish Chander tendered his affidavit, PW8 Const. Sudhir took the injured to the hospital on 24.06.1996 whose name was later revealed as Ved @ Krishan, PW9 Inspector Shiv Charan arrested accused Suresh, PW14 SI Deep Chand had attested the disclosure statement made by accused, PW17 SI Brij Bhushan had interrogated the accused Suresh and recorded his disclosure statement. He proved the demarcation memo made on the basis of disclosure statement,

PW19 SI (Retd.) had recorded the formal FIR of this case, PW20 Const. Shamsheer deposed that accused Suresh was interrogated in his presence and demarcation memo was attested by him. PW22 Fateh Singh, Inspector is the investigating officer.

PW10 Dr. Subhash Jindal medicolegally examined injured Ved, PW15 Dr. Vimal Sharma conducted autopsy on the dead body of unidentified person, PW21 Dr. Sandeep Makin radiologically examined the injured (Ved) and PW23 Dr. Jang Sher Singh medicolegally examined Girdhari Lal and Jawahar.

PW11 Girdhari Lal, the complainant, PW12 Jawahar Lal, the injured and PW13 Mahesh are the eye-witness.

PW Girdhari Lal had deposed that on 05.04.1996 he along with his brother Jawahar Lal were present at his cloth shop and had Rs.15000/- cash with him and were counting it. In the meantime, two persons entered the shop, one of them was armed with knife and other was having pistol. The man carrying knife tried to snatch the money kept in cash box. He objected to it and during scuffle he sustained injuries on hand and stomach. The other person pointed pistol on his brother Jawahar. He further deposed that two other persons were standing outside the shop and fired a shot from the pistol. They shouted for help, upon which hundreds of people gathered at the spot and gave beatings to two persons nabbed at the spot, out of whom one died at the spot and another sustained injuries. The police was called at the spot who took the injured dacoit with them. In his cross-examination he admitted that three years had lapsed and he found

it difficult to identify the looters. He admitted that the person who sustained injury was not seen by him.

PW12 Jawahar Lal deposed that on 05.04.1996 four persons came to their shop, out of whom three were armed with pistol and fourth one was holding a knife, who snatched the cash. During struggle, one of the person hit him with pistol on his head and the person holding the knife inflicted injuries to his brother. He deposed that two persons ran away along with amount and they raised alarm and number of people came to the spot and encircled the looters and gave them a beating. One died at the spot while other got injured. The police came to the spot and shifted them to the hospital. He further deposed that injured miscreant was also shifted to the hospital for treatment. He failed however to identify the dacoits and was turned hostile. In his cross-examination he admitted that injured dacoit was taken first to the hospital by the police.

PW13 Mahesh deposed that on 05.04.1996 he heard the noise and went to the spot and noticed that hundreds of people had gathered there. The people were giving beating to two miscreants and thereafter the police came there and took the injured dacoit with them. This witness was also declared hostile and upon being cross-examined he failed to identify any of the accused.

The eye-witnesses though had given the vivid description and the manner in which the occurrence had taken place, but they failed to identify the appellants. There is thus no

direct evidence against the appellants.

From the testimonies of complainant, injured and eye-witness, it is evident that on 05.04.1996 a robbery had taken place at the shop of Girdhari. The dacoits were armed with pistols and knife. It had further come out from their evidence that two miscreants were held at the spot by the mob and were given a severe beating that one of them died and other was injured. It has come in evidence that the police came at the spot and injured dacoit was shifted to the hospital. Though PW11, PW12 and PW13 had failed to identify the dacoits, it was because the witnesses were deposing after a time gap.

From their testimonies, it is evident that the injured dacoit was shifted to the hospital. According to prosecution, it was appellant Ved @ Krishan who was the injured dacoit. To substantiate it, the prosecution examined PW7 SI Jagpal Singh who came to the spot. He was categorical that on reaching the spot he noticed a person lying dead and other one was injured and .12 bore, loaded pistol was recovered lying by the side of injured and one .315 country made pistol was lying by the side of dead dacoit. Both the pistols were taken into police possession vide recovery memos Ex.PG and PH.

PW8 Const. Sudhir deposed that on 05.04.1996 he took the injured whose name was lateron revealed as Ved @ Krishan to hospital for treatment.

The statement of PW18 is important. He deposed that the injured dacoit was shifted from Shori Market by Inspector

Fateh Singh to the hospital where he remained under his supervision from 05.04.1996 to 08.04.1996. He specifically deposed that on enquiry, the injured disclosed his name as Ved @ Krishan and he was present in the Court. He further deposed that he was the same person who had sustained injuries at the time of dacoity at the shopt in Shori Market. He further deposed in his cross-examination that Ved was apprehended at the spot by the public.

PW22 Inspector Fateh Singh is the investigating officer. He deposed that on receipt of information about the loot, he had gone to the spot and noticed one person lying injured and the other one was dead. A .12 bore loaded pistol was recovered from the side of injured, which was taken into police possession. A .315 bore pistol was lying near the dead body and it was also taken into possession. The injured dacoit was shifted to the hospital where he remained unconscious upto 07.04.1996 and on regaining consciousness, on 08.04.1996 he was discharged from the hospital. On interrogation, the injured dacoit disclosed his particulars. He identified the accused present in Court as Ved i.e. the present appellant. In his cross-examination he stated that people gathered there told him that two persons had escaped from the spot while one died on the spot and the fourth one was lying injured.

From the above sequence of events as narrated by prosecution witnesses, the inevitable conclusion is that appellant Ved @ Krishan was one of the dacoits who was nabbed at the

spot by the mob along with fire arm. His presence at the spot is clearly established from the testimonies of prosecution witnesses, which proves his involvement in the offence. There is no reason but to rely on their testimony which is trustworthy and inspires confidence, so far as involvement of appellant Ved @ Krishan in the offence is concerned. It is not a case of mistaken identity. Nothing has been shown that after arrest, he made any representation to the higher authorities complaining about his false implication. No evidence in defence was led by him to prove that it was a case of mistaken identity. His presence at the spot with country made pistol and deposition of aforesaid witnesses after he was caught red handed at the spot is clearly establishing his guilt. Appellant Ved @ Krishan was part of the dacoits that committed robbery on 05.04.1996.

So far as appellant Suresh is concerned, it was the case of the prosecution that out of the two persons who ran from the spot, one was appellant Suresh. The case of the prosecution was that when he was running from the spot, he was intercepted by PW13 Mahesh. He was caught by his shirt, but the appellant removed the shirt and ran from the spot. A diary was said to have been found in the shirt bearing the signatures of appellant Suresh in English at one page. The prosecution also relied upon the disclosure statement made by appellant Ved @ Krishan wherein he named Suresh @ Pappal as members of their group. It was also their case that Suresh got the place of occurrence demarcated.

In the considered opinion of this Court, the evidence brought forth against the appellant Suresh is legally not admissible to sustain his conviction. The eye-witnesses failed to identify him. PW13 Mahesh was the star witness, he too failed to identify him. A disclosure made by a co-accused is legally not admissible in evidence unless there is discovery of some facts or some recovery. The place was already known to the police. There was no discovery of new fact. There was no recovery pursuant to the disclosure. The prosecution made a feeble attempt to connect the appellant Suresh with the crime and referred to the diary, Ex.P8 alleged to have been recovered from the spot, but there is nothing to connect him. The diary was never sent to hand-writing expert for comparison of the signatures. The investigating officer admitted that the diary was not even sealed. The prosecution had failed to lead cogent and convincing evidence to prove the involvement of appellant Suresh @ Pappal. Therefore, his conviction cannot be sustained.

For the reasons recorded above, appeal filed by appellant Ved @ Krishan is dismissed. The appeal filed by appellant Suresh is allowed and he is acquitted.

September 09, 2015
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(ANITA CHAUDHRY)
JUDGE