

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 629-SB of 2003(O&M)

Date of Decision: May 15 , 2015.

Nitin

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Atul Lakhanpal, Senior Advocate with
Ms. Bably Kumari, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant Nitin has challenged the judgment of conviction and order of sentence dated 13.03.2003 and 15.03.2003, respectively, passed by learned Additional Sessions Judge, Hisar vide which he has been convicted for the offences punishable under Sections 392/397 IPC and Section 25 1-B(b) of the Arms Act, 1959. He has been sentenced to undergo rigorous imprisonment for five years, besides, pay a fine of ₹500/- and in default thereof, to undergo rigorous imprisonment for one month for the offence punishable under Section 392 IPC, to undergo rigorous imprisonment for seven years for the offence

punishable under Section 397 IPC and to undergo rigorous imprisonment for one year, besides, pay a fine of ₹500/- and in default thereof, to undergo rigorous imprisonment for one month for the offence punishable under Section 25 1-B(b) of the Arms Act. All the sentences were ordered to run concurrently.

FIR No.433 dated 30.11.2000 (Ex.PB/2) was registered on the basis of statement (Ex.PB) of Manohar Lal recorded on 30.11.2000 at 12.30 a.m. by ASI Santa Singh, police station city Hansi. Complainant Manohar Lal stated that he was engaged in doing domestic work. His mother Parmeshwari Devi was admitted in Leekha Hospital, Hansi. On 29.11.2000 at about 11.00 p.m., he was returning from his mother at the hospital. As he reached near the PWD workshop, a young man, wearing a shawl, was seen standing near a pole. On seeing him, the said man came towards him. He took out a dagger from underneath his shawl and threatened the complainant while pointing a dagger at chest of the complainant to handover whatever he had otherwise he would be killed. Out of fear, complainant took out ₹230/- and gave it to the accused. On taking the money, the young man ran away towards Sabzi Mandi. In the meantime, Vikash son of Krishan Kumar and Bhavnesh son of Jagan Nath arrived on scooter. He stopped them and told about the young man who had made good towards the Sabzi Mandi after snatching his money. All three of them sat on the scooter and tried to look for the young man. When they reached near the State Bank situated on the link road towards Barwala, the said young man was seen going through Tikona Park. All three of them apprehended him near Nirankari Bhwan. On hearing noise, number of persons gathered there. Dagger and ₹230/- were recovered from his possession. Young man disclosed

his name as Nitin son of Maman Ram i.e., the present appellant. People who had gathered there gave him fist and slap blows due to which blood oozed out. Complainant was going towards the police station when he met ASI Santa Singh police station city Hansi on which the statement (Ex.PB) of the complainant was recorded on 30.11.2000 at 12.30 mid night. Thereon formal FIR No.433 dated 30.11.2000 (Ex.PB/2) was registered.

On completion of investigation challan/report under Section 173 Cr.P.C. was presented under Sections 397/392/34 IPC. Charge was framed under Sections 397/392 IPC and Section 25 of the Arms Act against the accused on 05.03.2002 to which he pleaded innocence and claimed trial.

Prosecution examined as many as three witnesses to prove its case.

Witnesses Bhavnesh and Vikash were given up has having been won over. Complainant Manohar Lal, PW2, did not support the prosecution case.

Accused while denying the incriminating material against him in his statement under Section 313 Cr.P.C. pleaded innocence and false implication. No evidence in defence was however led.

Learned trial court while taking into consideration the facts, circumstances and evidence on record convicted and sentenced the appellant-accused as described in the foregoing para. Aggrieved therefrom, present appeal has been filed.

Learned senior counsel for the appellant submits that the learned trial court has grossly erred in convicting and sentencing the appellant inasmuch as the star prosecution witness has not supported the prosecution case.

Complainant Manohar Lal PW2 has categorically stated that the appellant was not the person who had snatched the money from him. In this view of the matter prosecution has no legs to stand. The conviction of the appellant is thus clearly flawed. The other two alleged eye-witnesses of the apprehension of the accused have not been examined having been given up by the prosecution. It is vehemently argued that in this situation there is no evidence to connect the appellant-accused with the offence in question.

It is further submitted that as per the Investigating Officer PW3 ASI Santa Singh clothes of the accused were blood stained as he had injuries. Said blood stained clothes were not produced neither was any doctor examined to prove that the accused was medico-legally examined as alleged. It is submitted that present is a case of no evidence at all therefore, the impugned judgment and order deserve to be set aside.

On the contrary, learned counsel for the State vehemently refutes the said arguments. It is submitted that the accused was virtually arrested on the spot. Recovery of the weapon of offence and money which he snatched was recovered. Official witnesses have steadfastly supported the prosecution version. In case the complainant and other private witnesses have chosen to resile from their statements and not support the prosecution version, it cannot detract from the veracity of the prosecution case. Learned counsel for the State further states that appellant is facing trial in four other cases. He is facing trial for the offences punishable under Sections 392/393/394/326/379/420/468/471/452/324 IPC etc. in various cases. Appellant is stated to be a habitual offender not deserving the indulgence of this Court in any manner. He prays for upholding the conviction and sentence imposed upon the appellant.

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

Great stress is laid on the argument that identity of the appellant is not proved for the reason that complainant Manohar Lal himself has not supported the prosecution version. In his testimony before the court, he has stated that it was not the accused who had snatched the money from him on the intervening night of 29th and 30th November, 2000. A perusal of the testimony of PW2 Manohar Lal before the trial court reveals that though he has been declared hostile, he admits the incident occurred on 29.11.2000 at about midnight in the same manner as stated by him in his initial statement (Ex.PB) before the police. However he has refused to identify the present appellant as the person who had committed the crime.

A Division Bench of this Court in **Pranab Bishwas v. State of Punjab, 2012(4) RCR(Criminal) 337** has held that the evidence of hostile witness would not be totally rejected but it can be subjected to a greater and closer scrutiny. It has been observed that:-

“..... To allay the fears of prosecution about the impact of the witnesses turning hostile, the law on the subject is very well settled that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The statement of a witness turning hostile recorded under Section 161 Criminal Procedure Code when confronted by the prosecution, can be taken into consideration by virtue of proviso to 162(1) Criminal Procedure Code. For the above principles, the reference can be made to *State of Rajasthan v. Teg Bahadur and other, 2004(4) RCR(Criminal) 538: 2004(3) Apex Criminal 611:*

(2004) 13 SCC 300 and Bhagwan Dass v. State (NCT of Delhi), 2011(2) RCR(Criminal) 920: 2011(3) Recent Apex Judgments (RAJ) 153: (2011) 6 SCC 396.

In the light of these observations, it is noted that PW3 ASI Santa Singh clearly testified that he was present alongwith the other police officials at about midnight on 29.11.2000 at Bajria Chowk, Hansi. Complainant Manohar Lal alongwith Bhavnesh and Vikash produced appellant-accused Nitin before him alongwith a dagger and ₹230/-. He has supported the prosecution case to the hilt. It is revealed by him that the accused was having injuries and he was medically examined at about 3.45 p.m. Ex.PF is the request for medical examination of the accused to the Medical Officer, Govt. Hospital Hansi as well as the examination report by the doctor revealing injuries upon the accused. There is no evidence on record to show that the official witnesses were inimical towards the accused, holding a grudge against him and having an axe to grind qua the appellant. There is no reason whatsoever for them to falsely implicate the accused. Fact that the other two eye-witnesses of apprehension of appellant-accused are not examined because they were won over by the accused cannot improve the appellant's case. He can derive no benefit therefrom.

It is relevant to note that complainant Manohar Lal has been duly confronted with his statement Ex.PB which he had made at the initial stage. Therefore, keeping in view the observations in the judgment in Pranab Bishwas's case (supra), it is not the entire evidence of this witness which has to be rejected but the portion thereof consistent with the prosecution version can be accepted in the facts of this case. He has duly affirmed the occurrence of the incident at

about 11.00 p.m. on 29.11.2000. Just because the complainant and other two persons Bhavnesh and Vikash have not supported the prosecution version cannot be a ground for setting aside the conviction and sentence imposed upon the appellant. In the peculiar circumstances of this case it cannot be held that identity of the accused is not established only on account of the complainant being declared hostile. There is sufficient and cogent evidence on record fixing the identity of the appellant in this case.

An attempt has been made by Shri Lakhanpal to suggest that the Ruqa in this case was received at 12.30 mid night on 29.11.2000 but the Investigating Officer reached the spot at about 1.00 a.m. Therefore, it cannot be confirmed that it was the appellant who was arrested at the spot at mid night. Said argument is a futile attempt on behalf of the appellant as perusal of the testimony of PW3 ASI Santa Singh as well as the evidence on record shows that the accused Nitin was produced before ASI Santa Singh alongwith other police officials at Bajria Chowk, Hansi itself by the complainant and others at 12.30 mid night. Recovery of the dagger and the money was effected. Ruqa was sent and thereafter, he had proceeded to the place of occurrence alongwith accused and others. Therefore, there is no discrepancy as sought to be pointed.

No other point has been urged.

Keeping in view the discussion as above, learned trial court has rightly convicted and sentenced the appellant for the offences punishable under Sections 392/397 IPC and Section 25 of the Arms Act, 1959. There is no infirmity or illegality in his conviction and sentence.

Consequently, this appeal is dismissed.

Bail bonds and surety bonds of the appellant shall stand cancelled.

Copy of the judgment be sent to learned Chief Judicial Magistrate,
Hisar, who shall take necessary steps to take the appellant in custody to undergo
rest of the sentence imposed upon him.

May 15 , 2015.
'om'

(LISA GILL)
JUDGE