

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 15.12.2015
CRA-D-750-DB-2007 (O&M)

Sompal

..... Appellant

Vs.

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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?

Argued by: Ms. Tanu Bedi, Advocate
for the appellant.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

RAJ RAHUL GARG.J.

The appellant Sompal presented this appeal against the judgment dated 27.07.2007, whereby, he was convicted for committing offence punishable under Section 395 read with Section 397 of Indian Penal Code (for short 'IPC') and under Section 396 of IPC. This judgment was rendered by learned Additional Sessions Judge, Sonapat. Vide order of sentence dated 30.07.2007, accused Sompal was sentenced to undergo imprisonment for a period of 10 years and to pay a fine of ₹3,000/- for the offence punishable under Section 395 read with Section 397 IPC. In default of payment of fine, to further undergo

rigorous imprisonment for a period of 6 months; for committing offence punishable under Section 396 IPC, he was sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of 10 months.

Brief facts of the prosecution case are like this; that Rajbir (deceased), who was employed in Air Force at Hyderabad, had gone to the house of his maternal uncle Roshan Lal at Jawahar Nagar, Sonapat. He reached there at about 11:30 P.M. on 04.03.1996. Complainant Baljit Singh (PW5), brother of the deceased, was also present there. From there, the complainant and deceased had proceeded to their village Shamri on Yamaha motorcycle of Black colour bearing No. DL-2SK-1028. Motorcycle was driven by deceased. At about 2:00/2:30 A.M., when they reached near village Bajana Kalan and were at some distance from the minor, they saw dark complexion young man, having height of about 5' 9" and aged 24/25 years, wearing *kurta pajama*. Four young men were also seen at some distance from the aforesaid young man, in the light of the motorcycle. The young man, who was wearing *kurta pajama*, gave a signal to them at pistol point to stop. That young man exhorted that if they tried to flee, he would kill them. In the meanwhile, other four persons armed with rods, *dandas* and pistol also reached there. Complainant gave identity of those persons like this; that one man was wearing *bushirt* of cream colour and pant of light yellow colour. He was aged about 19/20 years and his height was about 5'.

Second young man was wearing the *bushirt* of light sky colour and pant of pink colour. He was aged about 20/21 years and his height was 5'. The third young man was wearing *bushirt* of blue and black colour and blue pant. He was aged about 19/20 years and his height was about 5' 6". The fourth young man was having height of 5' and he was aged about 19/20 years and was wearing T-shirt and pant. As per complainant, all the aforesaid culprits started searching the complainant and the deceased. When the deceased lodged protest, one of the assailants gave a blow with rod on his head, as a result of which, he fell down. Thereafter, driving licence, an amount of approximately ₹3500/- and one diary were taken out from the pocket of deceased and one purse of black colour having a passport size photograph of the complainant and ₹200/- were taken out from his pocket. The culprits were naming each other as Mohan, Sanjay, Som Pal, Satish and Bira. Thereafter, all the 5 culprits escaped on the motorcycle of the deceased towards village Bajana Kalan. Complainant waited for some conveyance for sometime but as no vehicle reached there, he went to his village on foot and informed about the occurrence to his family members. Thereupon, his father, younger brother Ashok Kumar and nephew Mukesh came to the spot on a tractor and took Rajbir to D.N.Sharma, Hospital at Sonapat. Later on, deceased was shifted to Army Hospital, Delhi Cantt., where he succumbed to the injuries on 12.03.1996. Inquest report Ex. PU/1 was prepared. Post-mortem on the dead body was got conducted from Safdarjang Hospital, New Delhi.

Dr. G.D.Sharma (PW8) sent ruqa Ex.PP to the police station, whereupon, Sube Singh, Sub Inspector, reached there and recorded the statement of complainant as Ex.PE. After making his endorsement Ex.PE/1, the same was sent to the police station for registration of the case on the basis of which formal FIR Ex.PB was recorded. Sube Singh, Sub Inspector alongwith Baljit Singh-complainant, visited the spot on 05.03.1996. Rough site plan of the spot was prepared as Ex.PR. Blood stained earth was lifted from the spot and the same was taken into possession vide memo Ex.PA. On 10.03.1996, accused Sompal, Satish, Mohan and Sanjay were arrested. On interrogation, accused Mohan, Sanjay and Sompal, made disclosure statements Ex.PG, Ex.PH and Ex. PJ respectively and in pursuance thereof, accused Mohan got recovered an amount of ₹800/- and driving licence of Rajbir; accused Sanjay got recovered an amount of ₹800/- and pocket diary of Rajbir and accused Som Pal got recovered ₹1,000/-, purse of the deceased, one iron-rod and motorcycle bearing No. DL-2SK-1028. Recovery memos in this regard are Ex.PK, Ex. PL and Ex. PN. Site plan of the place of aforesaid recoveries were prepared as Ex.PS/1 to Ex.PS/3. Accused Satish had also made disclosure statement and recovery was also effected in pursuance of that disclosure statement. On 19.03.1996, photocopy of power of attorney and photocopy of registration certificate of the motorcycle were produced by Raj Karan (PW12) and the same were taken into possession vide memo Ex.PT.

On 29.03.1996, accused Bira was arrested. During his

personal search, an amount of ₹50/- one purse and photo of Baljit Singh-complainant were recovered and the same were taken into possession vide recovery memo Ex. PC. On interrogation, he made disclosure statement Ex. PD/1 and also demarcated the place of occurrence, regarding which memo Ex. PD was prepared. Scaled site plan regarding place of occurrence was got prepared as Ex.PF. On completion of necessary investigations, the challan was put in the Court against the accused.

Finding a prima facie case against the accused, they were charge-sheeted for committing offence punishable under Section 395 read with Section 397 and under Section 396 IPC. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded, wherein they denied each prosecution allegation and pleaded their innocence.

When the case was at the stage of defence evidence, accused Bira and Som Pal absented themselves and their presence could not be secured. They were declared as proclaimed offender vide order dated 19.03.2001. Accused Mohan and Sanjay were held guilty and convicted vide order dated 21.04.2001 and sentenced vide order dated 26.04.2001 rendered by learned Additional Sessions Judge, Sonapat. The said judgment has been affirmed by Court in Criminal Appeal No.339-DB of 2001, titled as **Mohan and another Vs. State of Haryana**. Accused Satish was juvenile. Accused Som Pal surrendered before the Court on 19.01.2007. As such, he was called upon to lead

evidence in defence to which he did not chose to do so.

Under the above-discussed evidence and after hearing both the sides and appraising the entire material and evidence on record, the learned Additional Sessions Judge, Sonapat, rendered the impugned judgment of conviction dated 27.07.2007 and order of sentence dated 30.07.2007, as set out in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides going through the record of this case.

Learned counsel for the appellant-accused argued that as per prosecution case, the appellant along with co-accused committed the offence at the dead of night. As per Baljit Singh (PW5), he could identify the assailants in the light of the motorcycle. It is highly improbable that when accused after committing the offence, had run away from the spot, the complainant would be able to identify all the accused in the light of the motorcycle. Admittedly, in this case, identification parade was not got conducted by the prosecution. Accused were not already known to the complainant. As such, the identification of the accused for the first time in dock is not proper. Ms. Tanu Bedi, learned counsel for the appellant, also cited a passage from **Halsbury's Laws of England (fourth Add., Vol. 11, para 363)**, which is as follows:-

“It is undesirable that witnesses should be asked to identify a defendant for the first time in the dock at his trial; and as a general practice it is preferable that he should have

been placed previously on a parade with other persons, so that potential witnesses can be asked to pick him out.”

In support of her contention, she has cited **Rameshwar Singh Vs. State of J&K, 718 SCC (Crl.), 641, para 6** in which it was held that:-

“it may be remembered that the substantive evidence of a witness is his evidence in court, but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in the court at the trial”

Further citing **George Vs. Kerela, 1998 (4) SCC, 605,** it was contended that omission to hold test identification parade (TIP), if accused is not earlier known to witness, is not fatal but make the substantive evidence of identification in the Court after a long lapse of time, a weak piece of evidence and cannot be relied upon unless sufficiently and satisfactorily corroborated.

In fact, this very Court passed judgment in Criminal Appeal No.339-DB of 2001, titled as **Mohan and another Vs. State of Haryana.** Mohan son of Ghan Shyam and Sanjay son of Dharmpal, co-accused of the appellants stands convicted arising out of the same FIR

No. 67 of 05.03.1996. In that case as well, this question was gone into in detail and was decided against the accused.

It is not a case in which appellant-accused has been identified for the first time in the Court. It is also not the case in which the testimony of complainant Baljit Singh (PW5) is not corroborated by any other evidence on record. Mukesh as PW6 corroborated the statement of Baljit Singh (PW5) on the point that they told the police about the accused as the one given injuries to Rajbir and further that out of them, four were standing at Sanauli road. On reaching there, police arrested four accused namely Sanjay, Mohan, Som Pal and Satish. He also deposed that appellant-accused Mohan made a disclosure statement Ex.PG and disclosure statement Ex.PH of accused Sanjay. Likewise he also deposed about making of disclosure statement Ex. PJ by the appellant-accused Sompal and, thereafter, in pursuance with their disclosure statements, getting the recoveries effected by them. Above all, Baljit Singh (PW5) has given the names of accused in the FIR itself stating that since the accused were taking names of each other during the course of conversation, therefore, he came to know about the same.

Baljit Singh (PW5), is the one who was riding on the motorcycle driven by deceased Rajbir. Appellant-accused alongwith co-accused robbed Baljit Singh and Rajbir Singh of the money as well driving licence and purse. Thus, Baljit Singh (PW5) had seen the accused from the close quarter. Complainant Baljit Singh has also

given the detailed description of age, height and colour of each of the accused. Not only this, even at the pointing of PW5 Baljit Singh, police arrested the aforesaid 4 accused on 10.03.1996. Under these circumstances, the factum of non-holding of test identification parade pales into insignificance.

In **Dana Yadav @ Dahu and others Vs. State of Bihar, 2002 (7), SCC, 295**, the Hon'ble Supreme Court has held that the test identification parade, though a primary evidence, but is not a substantive one. Such evidence is used to corroborate the evidence given before the Court which is a substantive evidence. As such, failure to conduct test identification parade, is not fatal in this case.

The next argument raised by learned counsel for the appellant-accused is this that there were no special mark of identification on recovered articles. Currency notes as well purse and iron rod were commonly available in the market. As such, recovery of these articles does not connect the accused with this crime. As per prosecution case, accused Som pal made disclosure statement Ex. PJ having hidden ₹1,000/- currency notes, a purse and an iron rod in an almirah of his brother, situated at HUDA Colony, Panipat. He also disclosed that he alone knew about that and can get the same recovered. He further disclosed that the motorcycle in question snatched by them was kept hidden in a room of the house of his brother, situated at Huda Colony, Panipat. He and Bira knew about that and can get the same recovered by giving *nishandehi*. Baljit Singh (PW5) and Mukesh

(PW6) corroborate the prosecution story in this regard. Both the aforesaid witnesses further deposed that in pursuance with his disclosure statement, accused Som Pal led the police party to HUDA Colony where the house of his brother was situated and got recovered ₹1,000/- currency notes, a purse and an iron rod from the almirah of that house; iron rod Ex. P22, purse Ex.P8 and currency notes Ex.P23 and Ex. P24 are the same which were got recovered by accused Som Pal from the almirah of the house of his brother. He also got recovered motorcycle No. DL-2SK-1028 from the room of the house of his brother. Aforementioned recovered articles were taken into possession by the police. Before that, the rough sketch plan of an iron rod was prepared as Ex.PM and it was also sealed with the seal of 'SS'.

In fact, accused Bira of this case, produced black colour raxine purse containing passport size photo of Baljit Singh (complainant) son of Ram Singh along with ₹50/- currency notes. Recovery of driving licence of Rajbir (deceased) from the possession of accused Mohan besides currency notes, pin points their involvement in this crime. There is no explanation on the file as to how the accused came in possession of photograph of Baljit Singh-complainant and driving licence of Rajbir (deceased). Pocket diary of Rajbir was recovered from accused Sanjay. In that diary, name and address of Rajbir was written besides many other addresses and telephone numbers. Appellant-accused Som Pal got recovered purse of red colour, an iron rod and motorcycle bearing No. DL-2SK-1028, make

Yamaha of black colour. With these recoveries, it cannot be said that they do not connect the accused with this crime.

Licence and motorcycle in question, which Baljit Singh-complainant and Rajbir (deceased) were riding at the relevant time, were recovered from the possession of accused Som Pal. As such, it cannot be said that there were no special mark of identification of the articles recovered from the possession of the accused.

In this case, the occurrence is of the intervening night of 4/5-03-1996. Appellant-accused was arrested on 10.03.1996. That very day, he suffered disclosure statement and got recovered motorcycle in question besides other articles. Even his co-accused were also arrested same day. Only Bira co-accused was arrested on 29.03.1996. He made disclosure statement on that day and also got recovery effected in pursuance with his disclosure statement. Under these circumstances, it cannot be said that the recovery was not in close proximity to the occurrence. Within a week of the occurrence, accused were arrested and recoveries were made. As such, the above contention of learned counsel for the appellant-accused are not sustainable.

The next point of argument raised by learned counsel for the appellant-accused is this; that in this case, FIR was lodged at 7:30 P.M. on 05.03.1996 whereas the time of alleged occurrence, as per prosecution story is 2:00/2:30 A.M during the intervening night of 4/5-03-1996. The FIR was thus lodged after more than 12 hours. This time was utilized by the prosecution to frame up the accused falsely in this

case. In support of her contention, she has cited the judgment **Ram Lakhan Singh Vs. State of U.P., (1977) 3 SCC 268.**

The above argument of learned counsel for the appellant-accused Som Pal is devoid of any force. In fact, Baljit Singh (PW5) has categorically stated that just after the occurrence, he waited for some help to take Rajbir to Hospital as the accused had taken away their motorcycle. When he could not find any help, he himself had gone to his house on foot and then came at the spot with his father, brother Ashok Kumr and nephew Mukesh on a tractor and, thereafter, took Rajbir to D.N.Sharma, Hospital at Sonapat. Not only this, he further deposed that from there Rajbir was shifted to Army Hospital, Delhi Cantt., where he succumbed to the injuries on 12.03.1996. under these circumstances, when the brother of complainant was seriously injured, his first priority would be to get him treated. Under these circumstances, he must have hardly got any time to think over the matter in question so far as lodging of FIR is concerned. In such a short time, it cannot be said that the person like complainant would be able to make consultation for false implication of the accused. There is in fact no material on the file to show that there was any enmity of the complainant or that of Mukesh with the accused. As such, it cannot be said that the FIR of this case is delayed one or that it is the result of thoughtout stories or coloured version.

For the reasons recorded above, finding no merit in this appeal. Maintaining the judgment of conviction dated 27.07.2007 and

order of sentence dated 30.07.2007, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

15.12.2015
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