

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-79-SB of 2004
Date of Decision:-21.10.2015

Balwant Singh @ Chhota ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Mr. H.P.S.Ghumman, Advocate,
for appellant.

Mr. A.S.Kler, DAG, Punjab.

SHEKHER DHAWAN, J.

Present appeal against judgment of conviction and order of sentence dated 01.11.2003. Appellant was held guilty for offence punishable under Section 398 of IPC and sentenced to undergo RI for 5 years and to pay fine of ₹1,000/-. In default of payment of fine he was ordered to further undergo RI for one month.

2. Relevant facts of the case that on 09.02.2000 at about 9.30 pm, complainant Shingara Singh was present at the liquor vend. Meanwhile three persons came on scooter bearing No.PB-48-2822 and parked the same in front of the liquor vend. They called the complainant to open the liquor vend. The said three persons were Ranjit Singh s/o of Mohinder Singh, Balwant Singh s/o Mewa Singh (present appellants) and Jagdip Singh. All three accused persons entered the liquor vend. Ranjit Singh was armed with *Kirch*, Balwant Singh was armed with naked sword and Jagdip Singh was

armed with '*danda*'. They asked him to hand over whatever was available with the complainant otherwise he would be killed, but the complainant refused to part with cash. In the meanwhile, Jagdip Singh caught hold of the complainant from hair and laid him on the ground. Lal Singh brother of complainant and Karnail Singh came to the rescue of complainant and then all the three accused started inflicting injuries on Lal Singh and Karnail Singh also. The complainant party also grappled with the accused. Ranjit Singh and Balwant Singh fell down on the bottles of liquor. Bottles of liquor were broken and accused Ranjit Singh and Balwant Singh received injuries. Jagdip Singh ran away from the spot on the scooter. On this information police started investigation in the matter. Accused persons were arrested. After completion of investigation challan was presented against appellant-Balwant Singh and Jagdip Singh.

3. During trial, learned trial Judge framed charge against the accused persons for committing offence under Section 398 IPC and after recording statement of the prosecution witnesses, accused were examined under Section 313 Cr.P.C. After considering the prosecution evidence and defence version, accused Jagdip Singh was acquitted of the charge framed against him and the present appellant Balwant Singh was held guilty and convicted accordingly for commission of offence under Section 398 IPC.

4. Being aggrieved of passing of the said order of conviction and sentence, appellant has filed the present appeal.

5. Learned counsel for appellant mainly argued that if the entire prosecution case is taken to be correct, offence under Section 398 IPC is not made out. More so, appellant has already undergone the substantial period of his sentence. It has come in the statement of PW-2 Shingara Singh, who

is material witness in this case that *kirpan* and *kirch* were not recovered at the spot. Meaning thereby the weapon used for commission of offence under Section 398 IPC is not proved to have been recovered from accused person. There is no connecting evidence that any blood marks of complainant or anybody else were on the sword or *kirch*. More so, PW-2 Shingara Singh has not supported the prosecution case qua accused Jagdeep Singh. The offence under Section 398 of IPC is not made out and at the most, it is the case for commission of offence under Section 393 of IPC.

6. Learned State counsel has taken the plea that *kirch* and *kirpan* were recovered from the accused persons and the same were sent to lab for analysis purpose. Learned trial Judge has rightly held the appellant-accused guilty for commission of offence under Section 398 IPC. Present appeal is without any merit and the same may be dismissed.

7. Having considered the submissions made by learned counsel for both the parties, this Court is of the considered view that allegations were levelled against three persons namely Balwant Singh (present appellant), Jagdeep Singh (acquitted after trial as there were no evidence against him), Ranjit Singh (died before framing of charge against him). Prosecution case is mainly based on the testimony of complainant PW-2 Shingara Singh who proved his statement Exhibit PC, PW-3 Lal Singh injured/eye witness and an attesting witness to the recovery memo, PW-4 Surjit Singh, Driver of the wine contractor who had taken the injured to hospital, PW-6 is Dr. Jaswant Singh who medico legally examined eye-witness Lal Singh and proved MLR Exhibit PJ. He had also medically examined Karnail Singh and proved MLR Exhibit PK; MLR Exhibit PL of Balwant Singh; MLR Exhibit PM of Ranjit Singh (since deceased). PW-8

ASI Chunni Lal had investigated the matter.

8. There is no dispute regarding identity of accused persons. Injuries were caused to complainant as well as to the witnesses and they were medically examined which have been duly proved. The only point involved in this case is whether the offence committed by appellant-accused is covered under Section 398 IPC or 393 of IPC.

9. For commission of offence under Section 398 IPC, the accused persons while making an attempt to commit robbery or dacoity, must be armed with deadly weapons. The prosecution case is that accused persons were armed with *Kirpan* and *kirch*. But it had come in the statement of PW-2 Shingara Singh itself that *kirpan* and *kirch* were not seen in the Court. If in fact *kirpan* and *kirch* were recovered from the spot, then the same must have been sealed on the spot by Investigating Officer. More so, Shingara Singh as PW-2 has admitted in his cross-examination that he had not seen the sword in the Court during the trial. He has also admitted in his cross-examination that he had not seen *kirch* in the Court at the time of trial. However, later on he maintained that he had seen the *kirpan* and *kirch* today in the Court but the same are not sealed one. The prosecution was under legal obligation to seal the weapon of offence used and recovered from the possession of accused on the spot and if that has not been done that makes the prosecution case regarding recovery of weapon and use thereto to be highly doubtful.

10. Taking these facts into consideration, the offence alleged against appellant-accused Balwant Singh under Section 398 IPC is not made out. However, the offence against appellant-accused Balwant Singh is covered under Section 393 IPC.

11. In view of the above, the present appeal is partly accepted. The judgment of conviction of Balwant Singh for commission of offence under Section 398 IPC and order of sentence is set aside however, the appellant Balwant Singh is held guilty for offence under Section 393 IPC and sentenced to undergo RI for a period of 3 years and to pay a fine of ₹1000/-. In default of payment of fine he shall further undergo RI for one month. The period already undergone by the convict during investigation, trial and appeal shall be set of, from the sentence awarded thereto.

12. Present appeal accepted partly in above terms.

October 21, 2015

msd

**(SHEKHER DHAWAN)
JUDGE**