

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

**1. Criminal Appeal No. S-2560-SB of 2012
Date of decision: 10.02.2015.**

Vikas ..Appellant

Versus

State of Haryana ..Respondent

2. Criminal Appeal No. S-2337-SB of 2012

Sanjay alias Sanju ..Appellant

Versus

State of Haryana ..Respondent

3. Criminal Appeal No. S-2487-SB of 2012

Dilbag ..Appellant

Versus

State of Haryana ..Respondent

4. Criminal Appeal No. S-3168-SB of 2012

Naveen ..Appellant

Versus

State of Haryana ..Respondent

5. Criminal Appeal No. S-307-SB of 2013 (O&M)

Mahender Singh and another ..Appellants

Versus

State of Haryana ..Respondent

6. Criminal Appeal No. S-3366-SB of 2012

Manish ..Appellant

Versus

State of Haryana ..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. G.P. Singh, Advocate
for the appellant in CRA-S-2560-SB of 2012.

Mr. Sanjiv Gupta, Advocate
for the appellant in CRA-S-2337-SB of 2012.

Mr. Chirag Kundu, Advocate and
Mr. Dharminder Balhara, Advocate
for the appellant in CRA-S-3168-SB of 2012.

Ms. Sumanjit Kaur, Advocate
for the appellant in CRA-S-3366-SB of 2012.

Mr. Sanjeev Kodan, Advocate and
Mr. S.K. Yadav, Advocate for the applicants-appellants
in CRM-29711 of 2014 in CRA-S-307-SB of 2013.

Mr. Vivek Khatri, Advocate for
Mr. Sumit Sangwan, Advocate for the appellant
in CRA-S-2487-SB of 2012.

Mr. Sandeep Moudgil, Addl. A.G. Haryana
for the respondent – State.

Daya Chaudhary, J.

By this judgment, six cases bearing Criminal Appeal Nos. S-2560-SB of 2012, S-2337-SB of 2012, S-2487-SB of 2012, S-3168-SB of 2012, S-307-SB of 2013 and S-3366-SB of 2012 shall be disposed of as said appeals have arisen out of the same judgment of conviction and order of sentence dated 24.07.2012 passed by Additional Sessions Judge, Bhiwani, whereby, all accused-appellants have been convicted for offences punishable under Sections 397 and 120-B of Indian Penal Code (for short 'IPC') and sentenced to undergo RI for a period of 10 years along with fine.

Briefly, the facts of the case are that FIR No.16 dated 19.01.2011 was registered under Sections 395, 397 and 120-B IPC at Police Station Sadar, Charkhi Dadri. As per the allegations in the FIR, on 18.01.2011, a telephonic message was received from Police Station City, Charkhi Dadri at about 10:30 pm at Police Station Sadar, Charkhi Dadri regarding an incident at Village Chiria. On receipt of said message, ASI Attar Singh along with other Police officials reached at the place of occurrence and injured Ashok Kumar was got admitted in Govt. Hospital, Charkhi Dadri. The injured was declared unfit to make statement by the doctor and was, subsequently, referred to PGIMS, Rohtak. Thereafter, statement of complainant/injured was

recorded. It was stated by the injured that he had purchased one Maruti Swift D-Zire car bearing registration No. HR-99-Temp-0576 on 24.11.2010. On 18.01.2011 at about 8:00 pm, when he was leaving for Khatu Shyam Baba (a religious place in Rajasthan), two boys, who were known to him by face, took lift from him and when they reached at Village Chhuchhakwas via Deeghal and Beri at the insistence of those two boys, he started proceeding via village Matanhel and Bahu. On reaching Village Bahu, their three more friends also met them, who accompanied them to have 'Darshan' at the religious place. On the way, they threatened the complainant and started beating. He was even attacked with a sharp edged weapon on the forehead and was also given an iron rod blow by one of the occupants. Thereafter, rest of them also gave beatings to him and even fired a shot. They also took out the purse of the complainant containing ₹11,500/- and took away the vehicle as well. Complainant informed and narrated the whole incident to one Sanjay. Thereafter, the Police reached at the place of occurrence and got the complainant admitted in the Hospital at Charkhi Dadri from where he was referred to PGIMS Rohtak.

After registration of FIR, accused were arrested and their statements under Section 161 Cr.P.C. were recorded. On completion of investigation, challan was presented in the Court and thereafter, the accused were charge sheeted for commission of offences punishable under Sections 120-B, 395 read with Section 397 IPC, to which they pleaded not guilty and claimed trial.

Prosecution in support of its case examined as many as 24 witnesses.

On completion of evidence of prosecution, statements of accused under Section 313 Cr.P.C. were recorded.

No defence witness was examined by the accused.

On appraisal of evidence on record and after hearing both the parties, Additional Sessions Judge, Bhiwani convicted the accused-appellants for offences punishable under Sections 397 and 120-B IPC and sentenced them to undergo RI for a period of 10 years with fine of ₹2000/- each with default clause. All the sentences were ordered to run concurrently.

Aggrieved by the said judgment of conviction and order of sentence, six appeals have been filed by the seven accused-appellants, which are subject matter of challenge before this Court.

Learned counsel for the appellants submit that as per allegations in the FIR, there were total five persons, who participated in the alleged offence but seven persons have been convicted, which shows the false implication. Learned counsel for the appellants also submits that no identification parade was conducted and the accused were identified for the first time in the Court during the cross-examination only. As per the case of the complainant, accused-appellant Vikas was not present at the place of occurrence but then also, without having any connecting evidence, he has been implicated in the case. The accused-appellants have been impleaded only on the

basis of disclosure statement made by the accused, which is inadmissible under law. There are serious discrepancies and contradictions in the statements of the witnesses. Accused-appellant Vikas has been implicated in the case only on the basis of calls made to the co-accused and there is no other connecting evidence except the record of his call details.

Mr. Gurinder Pal Singh, Advocate appearing for accused-appellant Vikas submits that no offence is proved against accused Vikas as neither any allegation of conspiracy nor any connecting evidence is there to show his involvement in the present case.

Mr. Sanjiv Gupta, Advocate appearing for accused-appellant Sanjay submits that there is no independent corroboration as no independent witness was joined by the Investigating Officer and link evidence is also missing. Even on the basis of disclosure statement, no connecting evidence has come on record. Only recovery of mobile has been shown on the basis of disclosure statement, which has no value under law. Mr. Sanjiv Gupta, Advocate has also relied upon judgment of Hon'ble the Supreme Court in **Kanan and others vs. State of Kerala, 1979 ARI (SC) 1127** as well as judgments of this Court in **Pritam vs. The State of Haryana, 2003 (2) RCR (Criminal) 839, U.T. Chandigarh vs. Mohan Lal, 2004(2) RCR (Criminal) 799, German Singh and others vs. State of Punjab, 2005(1) RCR (Criminal) 817, Naresh and others vs. The State of Haryana, 2007(3) RCR (Criminal) 747, Ram Niwas vs.**

State of Haryana, 1996(2) RCR (Criminal) 313 and Rishi and another vs. State of Haryana, 2004(1) RCR (Criminal) 823 in support of his contentions.

Mr. Chirag Kundu, learned counsel appearing for accused-appellant Naveen submits that oral evidence has not been corroborated by medical evidence. As per MLR, there were total five injuries on the person of injured but as per ocular version, there were more than ten injuries, which creates doubt in the prosecution version. Mr. Kundu also submits that there was unexplained delay in lodging of the FIR but no justification has come on record for the same. No independent witness of the locality was joined whereas it was a busy place. It has also come in the statement of the Investigating Officer that certain persons were asked to join investigation from the place of occurrence but nobody was ready whereas names of those persons have not been mentioned. It is also the argument of learned counsel for the appellant that the prosecution has failed to prove the specific attribution of injuries caused to the complainant-injured as according to MLR, no injury was caused with sharp edged weapon whereas as per the statement of injured, the injury was caused with sharp edged weapon. It has also been argued by learned counsel for the appellant that the judgment of conviction is based only on circumstantial and hearsay evidence and by relying upon statement of co-accused, who was not present at the place of occurrence. Learned counsel also submits that the complainant has mentioned in his statement that two

of the accused, who have met him at the initial stage were known to him but still their names were not mentioned.

Mr. Sanjeev Kodan, Advocate appearing for accused-appellants-Mahender Singh and Satish submits that as per provisions of Section 25 of the Indian Evidence Act, disclosure statement made by accused while in Police custody has no value. The case was investigated by two Police officials namely, ASI Ajit Singh, PW5 SI/SHO Sri Bhagwan, PW16 but both of them did not join any independent witness, in absence of whom, the prosecution version cannot be relied upon.

Learned State counsel submits that the judgment of conviction passed by the trial Court is well reasoned and duly explained, which is based on proper appreciation of evidence. Some of the accused-appellants are even involved in a number of cases of similar nature and it cannot be said that they have falsely been implicated. Learned State counsel also submits that nothing has been said by the accused-appellants even in the statements recorded under Section 313 Cr.P.C. as to how they have falsely been implicated in the case.

Heard arguments of learned counsel for the appellants as well as learned State counsel and have also perused the record of the trial Court and evidence available on record.

PW1-ASI Badri Prasad is witness to recording of formal FIR whereas PW2 Sukhbir Singh is witness of getting medical record

and has stated that injured Ashok was admitted on 19.01.2011 and was discharged on that very day.

PW3-Constable Pankaj Kumar recorded disclosure statement of accused Naveen @ Sonu.

Injured-complainant Ashok Kumar appeared as PW4 and reiterated the contents of the FIR. He has also stated in his statement that he was threatened by one Neetu, who is relative of some of the accused, that he would be shot if he dared to appear before the Court as witness. He has also stated that one application in this regard was even moved in the Police Station. Complainant Ashok Kumar has stated in his cross-examination that accused Neeraj was not present in the Court but he knew that accused by name. He identified the accused by their names. Out of accused Dilbag, Sanjay and Vikas, accused Sanjay was not present on the spot. He has also admitted that he was discharged from PGIMS, Rohtak after giving date of operation.

ASI Ajit Singh PW5 has stated that when he was posted as Assistant Sub Inspector at Police Station Charkhi Dadri, a written intimation along with MLR of Ashok was received from General Hospital, Charkhi Dadri. Injured was referred to PGIMS Rohtak. When he was taken to PGIMS, Rohtak, an application was moved so as to seek information regarding fitness of injured, which was endorsed by the Doctor. Thereafter, he reached the village of injured and his statement was recorded. After recording of statement, he prepared

rough site plan of the place of occurrence and thereafter, supplementary statement was recorded on that day. It has also been stated that accused Naveen was taken out from Police lock-up and interrogated and he made disclosure statement Ex.PB regarding his involvement in the case and thereafter, accused Naveen was produced before the Court and his Police remand was obtained. Accused Naveen got the place of occurrence demarcated. Second day, he made another disclosure statement Ex.PE regarding concealment of purse along with cash in the house of his maternal uncle at village Kilo. On the basis of disclosure statement, amount was recovered, which was taken into possession. Accused Neeraj was arrested on 01.02.2011, who also made a disclosure statement regarding his involvement in the case along with other accused. PW5 has stated in his cross-examination that several persons came to the place of occurrence and he tried to join public witness but nobody was ready. Accused Naveen was arrested from bus stand, Rohtak on 27.01.2011 and he made a disclosure statement on 28.01.2011.

Head Constable Anil Kumar while appearing as PW6 has stated that SI Sri Bhagwan interrogated Sanjay @ Sanju in his presence and during interrogation, he made disclosure statement Ex.PJ regarding his involvement in the case along with other accused. On the basis of disclosure statement, a mobile phone was recovered, which was taken into possession on the same day. Accused Dilbag Singh was also interrogated and he made disclosure statement

regarding his involvement. Similarly accused Vikas @ Vicky also made disclosure statement and an amount of ₹90,000/- was recovered. Accused Aman was interrogated on 09.04.2011 and during interrogation, he made disclosure statement. Thereafter, disclosure statements were made on 12.04.2011 and 16.04.2011 regarding his involvement and recovery of Swift D-Zire car was made on the basis of disclosure statement, which was taken into possession vide recovery memo Ex.PM/1 on 26.04.2011. Accused Mahender was interrogated, who also made disclosure statement to the effect that documents of the car were given to one Abhimanu. On that day, accused Mahender and Satish also made disclosure statements.

PW11 ASI Bhushan Kumar while appearing before the Court has stated that accused Sanjay @ Sanju was interrogated by SI Sri Bhagwan and during interrogation, he made disclosure statement regarding his involvement in the case along with other accused. Again on 21.02.2011, main accused Sanjay made disclosure statement and stated regarding recovery of mobile phone, which was concealed by him in the almirah in his residential house. On the basis of said disclosure statement, the mobile phone was got recovered, which was taken into possession. It has also been stated that recovery of car was made on the basis of statement of accused Aman. The place of occurrence was demarcated by accused Manish alias Dada. He has also admitted regarding making disclosure statement of accused Satish @ Khunda. On the basis of disclosure statement of Satish @

Khunda, recovery of pistol used in the crime was made.

PW14 SI Satbir Singh has stated in his statement that mobile phone along with sim card was recovered on the basis of disclosure statement. Accused Vikas has also stated regarding sale of car.

PW20 Dr. Sandeep, Medical Officer, General Hospital, Charkhi Dadri, has stated that he has prepared the medico-legal report Ex.PBB and the same was intimated to Police Station. He has also stated that he gave his opinion regarding injury No.3, which was declared as grievous and the remaining injuries were simple as per X-ray report dated 24.05.2011.

As per arguments raised by learned counsel for the appellants, the accused-appellants have been convicted only on the basis of disclosure statements made by accused while in Police custody and as per provisions of Section 25 of the Indian Evidence Act, the disclosure statement is inadmissible under law.

On perusal of statements of PWs, not only the disclosure statements are there but recoveries of weapon used in the commission of offence along with the money, mobile phone, sim cards from the accused have also been effected and as per Section 27 of Indian Evidence Act, which is exception to Section 25, in case, any recovery is effected from the accused the disclosure statement could be relied upon. On the basis of disclosure statement, not only the recovery has been effected but call details of the mobile phones have

also been proved on the basis of statement of PW19 Constable Sandeep Kumar. During his cross-examination, he has stated that he had given cell ID of the accused Monu, Sanju, Neeraj, Satish, Vikas, Dilbag and Mahender. Moreover, Constable Sandeep Kumar was from Cyber Cell, Bhiwani and deposed regarding details of mobile phones.

On perusal of statements of the witnesses, it has been proved that there was a criminal conspiracy hatched by the accused and they have extorted the complainant by putting him under fear of death. Multiple injuries were caused on the person of the complainant by rods and purse, golden ring and car were snatched. The injuries caused to the complainant have been proved by the statement of Doctor, who has conducted medico-legal examination of the complainant.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the appellants and all the appeals bearing Criminal Appeal Nos. S-2560-SB of 2012, S-2337-SB of 2012, S-2487-SB of 2012, S-3168-SB of 2012, S-307-SB of 2013 and S-3366-SB of 2012 having no merits are hereby dismissed.

10.02.2015
neetu

(DAYA CHAUDHARY)
JUDGE