

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

Crl. Appeal No.S-1378-SB of 2003

Date of Decision: 15.12.2015

Ghanshyam

....Appellant

Versus

State of Punjab

....Respondent

Crl. Appeal No.S-1716-SB of 2003

Baljit Singh

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. S.S. Duhan, Advocate
for the appellant in
Crl. Appeal No.S-1378-SB of 2003.

Mr. Robin Dutt, Advocate
for the appellant in
Crl. Appeal No.S-1716-SB of 2003.

Mr. Rupam Aggarwal, D.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

By this judgment, two **Criminal Appeals** bearing Nos.**1378-SB of 2003** and **1716-SB of 2003** shall be disposed of as these have arisen out of the same judgment of conviction and order of sentence

passed by the trial Court. However, for the sake of convenience, the facts are being derived from ***Criminal Appeal No.1378-SB of 2003***.

FIR No.92 dated 29.10.1997 was registered under Sections 459/380/325/323/148/149 IPC at Police Station Lalru on the basis of complaint made by one Krishan Lal. The complainant, in his complaint, has stated that he was working on a liquor vend at Village Antala. On 28.10.1997, he along with one Satpal son of Tek Chand was sleeping in the country liquor vend and at about 2.00 a.m., some persons entered into the liquor vend after breaking the shutter with the help of iron rod. They did not allow the complainant and others to get up as they were armed with *sticks* and *iron rod*. One of those persons took the cash box and demanded for cash. On refusal, the accused persons started to give beatings, which continued for a while. The accused came out of the shop after giving beatings. On hearing the noise, some persons from the other shop came out and the accused gave *iron rod blow* on the head and mouth of Pawan Kumar. The complainant remained successful in saving himself from the accused persons. He fled away from the spot but stopped at a little distance. However, after some time, 10-12 persons went towards Ambala side on foot. The entire incident was told to Mohinder Singh, Member Panchyat, Gulab Singh, Sarpanch as well as to the owners of the liquor vends by the complainant. Injured Satpal and Pawan Kumar were brought to the hospital at Ambala Cantt. and an amount of ₹ 1495/- was found missing from the cash box.

On the basis of said complaint made by the complainant, the formal FIR was registered. The police reached at the place of occurrence and prepared the rough site plan. Thereafter, the accused were arrested. On completion of all the formalities, the challan was presented against the accused and after framing of charge, the accused persons faced trial. One

of the accused, namely, Ramesh Chand died during trial. Accused Gopal Bahadur confessed his guilt before Hon'ble Mr. Justice V.K. Bali, while on Jail Inspection and he was sentenced to undergo imprisonment for the period already undergone. The remaining accused, namely, Ghanshyam, Baljit Singh and Rajinder Singh were charged under Sections 459/380/325/323/148/149 IPC to which they pleaded not guilty and claimed trial. During pendency of the trial, one accused, namely, Rajinder Singh @ Raja was declared proclaimed offender.

The prosecution examined as many as seven witnesses in support of its version. Thereafter, the statements of accused under Section 313 Cr.P.C were recorded, wherein, both the accused denied the prosecution allegations and pleaded innocence. The defence did not examine any witness.

On appraisal of evidence available on the file and on the basis of statements of prosecution witnesses as well as statements of accused recorded under Section 313 Cr.P.C and after hearing the arguments of learned counsel for the parties, the trial Court convicted both the accused for offence punishable under Section 459/34 IPC vide its judgment dated 09.07.2003 and sentenced them to undergo rigorous imprisonment for a period of seven years with fine of ₹ 2,000/- each with default clause.

Both the accused, namely, Ghanshyam and Baljit Singh have challenged the judgment of conviction and order of sentence passed by the trial Court by way of filing separate appeal before this Court.

Mr. S.S. Duhan, learned counsel for the accused-appellant, namely, Ghanshyam submits that as per statement of prosecution witnesses, there were total ten assailants but only five were made accused by the prosecution. It is not the case of the prosecution that remaining five persons were found to be innocent. Learned counsel also submits that

accused-appellant Ghanshyam was not arrested from the place of occurrence and he has falsely been implicated in the case. Moreover, no test identification parade was ever conducted after arrest of the appellant and as such, the judgment of the trial Court is liable to be set aside. The accused-appellant was identified for the first time in the Court. Nothing was recovered from him and only a gold ring has been shown to have been recovered from accused- Rajesh Kumar, since deceased. As per prosecution version, the present appellant was having hand-pump rod in his hand and inflicted grievous injuries to Pawan Kumar, Krishan Kumar and Satpal but said rod was not recovered from him. Learned counsel also submits that even the involvement of the present appellant is doubtful as there is no connecting evidence to show his involvement.

Mr. Duhan, learned counsel for the appellant has also relied upon the judgment of this Court in case ***Mumtaj and others vs State of Haryana 2012(1) RCR (Criminal) 672***, wherein, it was held that in case no recovery of any stolen property was effected from any of the accused then the benefit will go to the accused. In the aforesaid case also the victims woke up on being hit by the accused at dead hour of night and they could not identify the accused being strangers. Having no evidence to link the accused with the occurrence and due to non-holding of any test identification parade during investigation, the accused was acquitted of the charge as the prosecution had failed to prove the guilt of the accused beyond reasonable doubt.

Mr. Robin Dutt, learned counsel for the accused-appellant, Baljit Singh, in addition to the arguments raised by Mr. Duhan, submits that PW-3 has admitted in his cross examination that the cash was not taken out from the counter and he saw the accused for the first time in the Court only. Learned counsel also submits that there is no evidence on record to

prove common intention. In case of common intention, there needs to be a pre-arranged plan in pursuance of which the criminal act was done by the accused person, whereas, it has not come in the statements of prosecution witnesses that they were having any pre-arranged plan. Learned counsel also submits that the accused-appellant, Baljit Singh was earlier arrested on 05.02.1997 even prior to lodging of the FIR, which was registered on 29.10.1997.

Learned counsel for the respondent-State submits that the judgment of the trial Court is well reasoned and is based on proper appreciation of evidence and as such, no interference is required by this Court.

Heard the arguments of learned counsel for the parties and have also perused the case file as well as the record of the trial Court.

PW-1 Mohinder Singh has stated in his cross-examination that he does not know the accused persons present in the Court and has not seen them at the place of occurrence. It has also been mentioned that the injuries on the persons of Satpal and Pawan Kumar were not inflicted in his presence.

Similarly, PW-2 Sat Pal has also stated in his statement that assailants were muffled faces and they did not cause injuries to him and Pawan Kumar. He has even denied with regard to recording of his statement by the police. In cross-examination, he has denied the entire statement in toto. He denied even the statement recorded by the police. The complainant as well as injured have not supported the case of the prosecution. They have resiled from their statements recorded by the police.

A perusal of statements of PW-1 and PW-2 would show that they even have not denied taking place of occurrence but even causing of

injuries.

Similarly, PW-3 Pawan Kumar, has stated in his cross-examination that no cash was taken out from the counter box in his presence. He had also stated that he was all alone in his shop and one young boy aged about 8/10 years, was also with him but he cannot tell the name of that boy and has not even named the accused in his statement.

PW-4 Krishan Lal has stated in examination-in-chief that he informed the owner of the vend about the occurrence and his statement was recorded by the police as Exhibit PW-4/A. In his cross-examination, he has stated that the golden ring was not handed over to him and that he did not know that the golden ring was recovered by the police or not. He had further stated that his statement was recorded on two occasions but the second statement was not got signed. Again, he has stated that Pawan Kumar fell down on the ground on receiving injuries outside the shop but he did not accompany the injured to the hospital. He has further stated that there were total ten persons but he cannot pin point them. The assailants were not wearing turbans and were not muffled faces. He had even denied regarding recovery of any cash in his presence.

PW-5 Dr. Tarsem Mangal has opined that injury No.1 on the person of Sat Pal was declared simple in nature, whereas, injuries No.2, 3 and 4 on the person of Sat Pal were declared grievous in nature. In cross-examination, he has stated that injured Pawan Kumar and Sat Pal were conscious when they were brought to the hospital but he did not remember as to who had accompanied them to the hospital. He did not take signatures of the injured on the Medico Legal Report (Exhibit PW5/N). He further submits that the possibility of injuries on the person of injured Sat Pal by forcibly falling on a hard surface cannot be ruled out. Same reply was there with regard to injury on the person of Pawan Kumar.

Similarly, PW-6 ASI Gurdial Singh, who was the Investigating Officer, has admitted in his cross-examination that he recorded the statements of Gulab Singh and Mohinder Singh at the place of occurrence on 29.10.1997 but he did not obtain the signatures of both the witnesses. He has also stated that no recovery was made from any of the accused during investigation. Said witness was transferred on 19.11.1997 and thereafter, the investigation was entrusted to other police officer.

PW-7 ASI Balwinder Singh has stated that accused Baljit Singh was arrested by him on 05.02.1997.

On perusal of statements of prosecution witnesses, it has been proved on record that no recovery was effected from the accused-appellants. There is no other evidence to link the accused with the occurrence. No test identification parade was held during investigation and the accused were not identified as the assailants by the victim in the Court during trial. Injured and complainant have specifically stated that they could not identify the accused persons as the occurrence took place at dead hour of the night and the witnesses were sleeping. When they were given beatings by the assailants, they could not have possibly identified the assailants being strangers. Only the place of occurrence has been proved but the evidence available on record is not sufficient to convict the accused. Even no recovery of stolen property was effected from the accused and as such, the benefit thereof would go to the accused as in absence of any recovery of stolen property, they could not be linked with the occurrence in dispute, particularly when there is no other evidence to link the appellants.

For the reasons mentioned above, it is apparent that the prosecution has not been successful in proving the guilt of the accused beyond reasonable doubt. The prosecution version appears to be doubtful

and the benefit of doubt goes in favour of accused-appellants.

Accordingly, **Criminal Appeal No.S-1378-SB of 2003** filed by **Ghanshyam** and **Criminal Appeal No.S-1716-SB of 2003** filed by **Baljit Singh** are allowed and the impugned judgment of conviction and order of sentence dated 09.07.2003 passed by the trial Court is set aside and the accused-appellants, namely, Ghanshyam and Baljit Singh are acquitted of the charge framed against them by giving the benefit of doubt. The accused-appellants are on bail after suspension of sentence and they are being discharged from the bail/surety bonds already furnished by them in the Court.

15.12.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE