

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3612-SB of 2012

DATE OF DECISION: JULY 13, 2015

PANKAJ AND ANOTHER

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. G.S. VERMA, ADVOCATE FOR THE APPELLANT.
MRS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Pankaj and Tilak Ram @ Tilak Raj have challenged the judgement of conviction recorded by the trial Court whereby both the accused were convicted under Section 323 IPC and were each sentenced to undergo 1 year R.I. and to pay a fine of ₹1000/- each and in default to undergo a further period of 15 days and were also convicted under Section 398 IPC and sentenced to undergo 7 years R.I.

2. It is the case of the prosecution that on 14.11.2011 at about 10.30 a.m. both the accused alongwith three other persons entered into the house of PW5 Parkash Kaur and attacked her and her daughter Amarjit Kaur who was deaf and dumb with small kirpan possessed by accused Pankaj and an iron rod possessed by accused Tilak Ram @ Tilak Raj and caused injuries during the course of attempting to commit dacoity.

3. PW5 Parkash Kaur lodged a complaint and set the law in motion. PW1 Harnek Singh and PW3 Swaran Singh apprehended both

these accused having given them a chase. PW2 Nirmal Kaur, a neighbour of PW5 was also one of the eye witnesses to the occurrence. PW6 Dr.Rajesh Bhatia examined PW5 Parkash Kaur and her daughter Amarjit Kaur and issued medico-legal reports. The above witnesses are found to be the star witnesses in this case.

4. PW5 Parkash Kaur has deposed that on 14.11.2011, at about 10.30 a.m., she and her daughter Amarjit Kaur, who was deaf and dumb, were present in their house at village Kahma. Five persons barged into her house and one of the accused started beating her daughter on her head. He also started beating her. PW5 and her daughter were in the grip of fear. They also threatened PW5 to tell them the storage point of the gold ornaments and money. They also demanded the key. PW5 and her daughter started crying. PW2 Nirmal Kaur the neighbour of PW5 arrived at the spot. She also raised hue and cry. Thereafter, the villagers led by PW1 Harnek Singh and PW3 Swaran Singh gave a chase to the accused. All the five persons made an attempt to escape from the clutches of the villagers. Accused Pankaj and Tilak Ram alongwith one Anil were apprehended at the spot. The police arrested them and on the basis of the disclosure statement suffered by each of them, a knife and rod were recovered underneath the kot of PW5.

5. PW6 Dr.Rajesh Bhatia medico-legally examined Parkash Kaur and found contusion on her eyes, bleeding from right nostril and blackening of right lower eyelid. All the above injuries were certified by him as simple in nature. He also medico-legally examined Amarjit Kaur. She was deaf and dumb. He found multiple superficial lacerated wounds five in number

on the top of scalp. Clotted blood was present in the vicinity of the wounds. He has certified that those injuries had been caused by blunt weapon. They were declared as simple in nature.

6. In the statement under Section 313 Cr.P.C., the above accused have come out with a defence that no recovery was effected at their instance, whereas a false case was foisted on them.

7. The trial Court having adverted to the evidence on record came to the conclusion that the accused who were armed with deadly weapons made an attempt to commit dacoity and caused injuries to PW5 and her daughter.

8. PW5 Parkash Kaur had sustained injuries in the occurrence. The injuries sustained by her had been corroborated by the medical evidence adduced through PW6 Dr.Rajesh Bhatia. The occurrence had taken place at her residence during broad daylight. Therefore, there is no reason to doubt the veracity of the evidence of PW5 Parkash Kaur. She has categorically deposed that 5 persons entered into her house and attacked her daughter Amarjit Kaur who was deaf and dumb and thereafter, they also attacked her and caused injuries. She has also testified that the accused having created fear in her mind, sought for the key and the whereabouts of money and gold ornaments. But fortunately, the accused could not complete the process of committing dacoity as her wailing had attracted the presence of PW1, PW2 and PW3 at the spot.

9. There is every reason for the prosecution not to examine Amarjit Kaur who also sustained injuries in the occurrence. The evidence

of PW6 Dr.Rajesh Bhatia would go to establish that Amarjit Kaur also sustained as many as 5 injuries on her head. PW6 Dr.Rajesh Bhatia has meticulously referred in the MLR issued by him that Amarjit Kaur was deaf and dumb. That apart, he has also certified during the course of evidence that Amarjit Kaur was unable to depose before the Court. PW5 Parkash Kaur also has spoken to the fact that her daughter was deaf and dumb. Such a fact has been referred originally in the first information report itself. Therefore, non-examination of Amarjit Kaur who sustained injuries in the occurrence does not create any dent in the case of the prosecution.

10. To support the evidence of PW5 Parkash Kaur, the prosecution examined PW2 Nirmal Kaur who witnessed the occurrence. It is found that she was a neighbour to PW5 Parkash Kaur. She has also deposed that she rushed to the house of PW5 hearing hue and cry from her house. She also identified the above two accused who fled away from the scene of crime. PW2 Nirmal Kaur is not a chance witness, but a natural witness who is competent to speak about the occurrence in her capacity as a neighbour of PW5.

11. PW1 Harnek Singh is none other than the son of PW2 Nirmal Kaur. PW3 Swaran Singh is also a neighbour of PW5 Parkash Kaur. PW1 and PW3 have categorically testified that they gave a chase to accused numbering five who fled away from the scene of crime, but they could apprehend only three including accused Pankaj and Tilak Ram. They also identified accused Pankaj and Tilak Ram as persons who were apprehended

by the villagers. There is no reason to reject the evidence of PW1 and PW3 who gave a chase alongwith the villagers to apprehend the accused. The evidence of PW1, PW2 and PW3 lends material corroboration to the evidence of PW5.

12. A knife and an iron rod had been recovered at the instance of accused Pankaj and Tilak Ram from the scene of crime itself. The prosecution has thus let in evidence to establish that these two accused Pankaj and Tilak Ram @ Tilak Raj alongwith three other accused came armed with deadly weapons and caused simple injuries to PW5 Parkash Kaur and her daughter Amarjit Kaur while attempting to commit robbery.

13. Learned counsel appearing for the appellants would vehemently submit that the other two eye witnesses, namely, Harjinder Singh and Tarsem Singh cited by the prosecution were not examined to support the evidence of PW5. Learned Addl.A.G., Punjab would resist such an argument on the ground that the quality of evidence adduced would go to establish that the accused have committed the offence punishable under Section 398 and 323 IPC.

14. It is a well settled proposition of law that it is not the quantity of evidence, but quality that matters. Apart from the testimony of injured witnesses, the evidence of natural witnesses who hailed from the neighbourhood have also corroborated the evidence of PW5. Under such circumstances, in my view, it is quite redundant to examine any other eye witness in this case. Therefore, non-examination of Harjinder Singh and Tarsem Singh cited as eye witnesses by the prosecution does not, in any

way, weaken the case of the prosecution.

15. Learned counsel appearing for the appellant would further submit that only one motorcycle was recovered from accused Tilak Ram. The recovery of one motorcycle allegedly occupied by five accused smacks of artificiality. It is true that one motorcycle alone was recovered at the instance of Tilak Ram. It may be a case where the other accused arrived at the occurrence village using different mode of transport. Recovery of only one motorcycle at the instance of one of the accused does not throw doubt on the case of the prosecution, more especially when there is credible and trustworthy evidence to accept the case of the prosecution.

16. Learned counsel appearing for the appellant would further submit referring to the evidence of PW5 that the accused were reportedly arrested on 18.11.2011, whereas the investigating agency had shown the date of arrest as 14.11.2011. Learned Addl.A.G., Punjab would submit that PW5 had corrected the inadvertence in her evidence in the next line of cross-examination itself.

17. It is the consistent case of the prosecution that the occurrence took place on 14.11.2011. The appellants had been arrested on 14.11.2011 and were remanded to judicial custody. By slip of tongue PW5 during the course of cross-examination stated that the accused were arrested on 18.11.2011. In the very same breath, she corrected the slip of tongue and stated that the accused were in fact arrested on 14.11.2011 itself. There is voluminous evidence on the side of the prosecution to establish that accused were in fact apprehended by the villagers on 14.11.2011 itself. Therefore,

the above inconsistency in the evidence of PW5 does not come to the rescue of the accused.

18. Learned counsel appearing for the appellants would vehemently submit referring to some of the decisions of the various High Courts and the Hon'ble Supreme Court that the case in hand is not a case whether there was really an attempt to commit dacoity. The accused might have had an intention to commit dacoity. But the intention was not translated into action and therefore, conviction under Section 398 IPC is illegal.

19. Firstly, he referred to a decision of the Chhattisgarh High Court in **Suresh Kanshi Rao Umak vs. State of Chhattisgarh, 2010(6) RCR (Criminal) 165**. It was a case where Constables on patrolling duty having spotted 2 persons holding Sabbal and 3 persons hiding nearby a wall of the bank raised alarm which led to the apprehension of all those persons. Under such circumstances, the Hon'ble Chhattisgarh High Court held that the conviction of the accused under Section 398 IPC was not proper.

20. In the instant case, the accused had not only caused injury to PW5 and her daughter having entered into their house, but also threatened them to divulge the whereabouts of gold ornaments and cash. The key also was sought for by them. In the above facts and circumstances of this case, in my considered view, the ratio laid down by the Chhattisgarh High Court does not apply to this case.

21. The Hon'ble Delhi High Court in **Swaran Singh vs. State, 2011 (4) RCR (Criminal) 134**, distinguished between “intention to commit dacoity” and “attempt to commit robbery” while setting aside the conviction

under Section 398 IPC recorded by the trial Court. It was a case where the accused who entered into the house of the complainant, finding some resistance from the inmates, fired a shot in the air and made an attempt to flee away from the scene of occurrence. It was not a case where accused put the victim under threat and demanded the victim to reveal the storage point of cash and gold ornaments. The above case also is factually distinguishable.

22. Learned counsel appearing for the appellants also cited a decision of the Hon'ble Supreme Court in *Birbal S. Chouhan etc. etc. vs. State of Chhattisgarh etc. etc., 2012(1) RCR (Criminal) 522.* That was a case under Section 399 and 402 IPC. In my considered view, the facts detailed in the above case by the Hon'ble Supreme Court have no connection with the present case under Section 398 IPC.

23. Learned counsel appearing for the appellant lastly appealed to the Court for leniency in the matter of sentence referring to the age of the appellants. Section 398 IPC prescribes minimum sentence of 7 years imprisonment. Not only the accused were armed with deadly weapons, but they also caused injuries to the inmates of the house. Under such circumstances, the question of reduction in the matter of sentence does not arise for consideration.

24. Therefore, the conviction and sentence passed by the trial Court as against the appellants stand confirmed and the appeal is dismissed.

July 13, 2015
Gulati

(M. JEYAPPAUL)
JUDGE

