

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

**1. Date of decision : 31.03.2015
Crl. Appeal No. 1896-SB of 2002**

Satyawan

....Appellant

versus

State of Haryana

...Respondent

2. Crl. Appeal No. 1809-SB of 2002

Naresh and another

....Appellants

versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

**Present: Mr. Gorakh Nath, Advocate,
for the appellant (in CRA-S-1896-SB of 2002).**

**Mr. Robin Singh, Advocate,
for the appellants (in CRA-S-1809-SB of 2002).**

Mr. C.S. Bakhshi, Addl. AG., Haryana.

RITU BAHRI, J.

This judgment shall dispose of Crl. Appeal Nos.1896 and 1809-SB of 2002 together as common question of law and facts are involved in both the appeals being arisen out of one judgment.

Both these appeals have been filed against the judgment of

conviction and order of sentence dated 12.10.2002 passed by the Additional Sessions Judge, Bhiwani, whereby accused-appellants Satyawan, Naresh and Dinesh have been convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2000/- each for commission of offence punishable under Section 392 IPC. In default of payment of fine, they were further sentenced to undergo rigorous imprisonment for a period of one year.

The FIR was registered on the basis of statement made by Mohinder Singh-complainant, alleging therein that he was working as a driver on a jeep bearing registration No. HR-33/0903, which belonged to his brother-in-law, Dharambir. One Sajjan Singh was working as a conducted on the said jeep. On 14.05.1998, at about 7.15 P.M., complainant along with aforesaid Sajjan Singh were going from Tosham to Sandwa. When they reached at Patodi turn, three young boys (appellants herein) boarded their jeep for going to village Sandwa. As soon as, they covered the distance of only 2/3 kilometers, one of the aforesaid accused asked the complainant to stop the jeep. When the complainant looked towards his back, he found that accused had pointed pistols at his both the ears. Thereafter, he was dragged out of the jeep. The complainant and Sajjan Singh were taken at a distance of 4/5 acres of land towards the agricultural fields and their clothes were taken off. The accused snatched a sum of Rs.1200/- from the complainant and thereafter, the complainant and Sajjan Singh were tied with two different trees. While leaving the spot, the accused had taken away the jeep of the complainant. In this background, the FIR was registered.

After registration of the FIR, investigation was conducted by

Inspector Ram Chander, who visited the place of occurrence and prepared a site plan (Ex.PB). Statements of Sajjan Singh and Umed Singh under Section 161 Cr.P.C. were recorded. On 01.06.1998, ASI Sukhvinder Singh received a secret information that some persons were planning loot the vehicles. Thereafter, a raid was conducted and five accused, including present appellants, were arrested. During interrogation, accused-appellant Satyawan, Dinesh and Naresh made their disclosure statements as Ex.PJ, Ex.PK and Ex.PL. Thereafter, they were taken to the place where the jeep in question was left. Memo of demarcation of the site, as pointed out by accused-appellants was prepared as Ex.PC, Ex.PD and Ex.PE. The Police party went to Police Station, Amber in Rajasthan, from where, they came to know that the vehicle belonging to the complainant was found unattended near the Dhaba of Omkar Meena at National Highway No.8, which was taken into custody by the police of Police Lines, Jaipur under Section 102 CR.P.C. The said vehicle, thereafter, was taken into police possession vide recovery memo Ex.PF. After completion of investigation, challan against all the accused was prepared and presented in the Court.

Trial Court, after going through the entire evidence led by the prosecution, convicted and sentenced the accused-appellants in the aforesaid terms. Hence, this appeal.

During the trial, Mohinder Singh-complainant (PW-1) and Sajjan Singh, conductor (PW-2) identified accused-appellants in the Court, who had boarded the jeep. Complainant had identified one of the accused by name as Satyawan, whereas other accused were identified by their appearance and not by their names. As per the deposition of Mohinder Singh-complainant (PW-1), accused got their pant and shirts removed and

they tied them with *janti* trees at a distance of 4/5 kallas from the road. They had also taken away currency notes of Rs.1700/- from Mohinder Singh-complainant. Firstly, Sajjan Singh got himself released and thereafter, he untied complainant-Mohinder Singh. After the occurrence, they met Dharambir in the village and thereafter, went to the police station to report the matter along with him. The complainant made a complaint, Ex.PA to the police. In his cross-examination, he admitted that photograph of Satyavan was shown to him by the police after 6/7 days of the occurrence and he identified Satyavan only, whereas photographs of other accused were not shown to him. Name of Satyavan was also disclosed to him by the police at the time of showing the photograph. After 10/12 days of the occurrence, all the three accused (appellants herein) were shown to him at Police Station, Bawani Khera, where officers of Police Station Tosham were also present. Deposition of Mohinder Singh has been fully corroborated by Sajjan Singh (PW-2). He also identified the accused in the Court. As per his deposition, two accused caught hold of the driver (complainant), whereas one accused caught hold of him and took them towards the fields, where they were tied with *janti* trees with the help of their clothes. Thereafter, the accused persons had taken away the jeep towards Patodi side. Since he was tied loosely, therefore, he got himself released firstly. Thereafter, he untied Mohinder Singh. In his cross-examination, he admitted that he was summoned by the police of Police Station, Bawani Khera after 17/18 days of the occurrence and by that time, the jeep was not got recovered. He admitted the presence of Mohinder Singh-complainant and Dharambir at Police Station, Bawani Khera, when he was summoned by the police. Accused-appellants were shown to him in the police station. On the same

day, one photograph was also shown to him. Their names were disclosed by the police. In his cross-examination, he denied the suggestion that he could not identify the accused due to darkness of night. The official witnesses namely SI Sukhvinder Singh (PW-10), Rohtash Singh (PW-5), Inspector Ram Chander (PW-7) and ASI Mohan Singh have corroborated the prosecution version in toto.

The defence taken by all the accused, before the trial Court, was that a false recovery has been shown against them.

Learned counsel for the appellants has argued that the identification of the accused-appellants in the Court for the first time was no identification.

While considering this aspect, the trial Court has observed that the photograph of Satyavan was shown to the witnesses. Moreover, the accused-appellants had made their disclosure statements (Ex.PJ, Ex.PK and Ex.PL respectively), which were duly proved by SI Sukhvinder Singh (PW-10). Apart from this, the accused were shown to the witnesses in Police Station, Bawani Khera, where the complainant as well as Sajjan Singh had been summoned. In Police Station, Bawani Khera, officers of Police Station, Tosham were also present. The identification was carried out after 17/18 days of the occurrence. The identification of the accused-appellants at Police Station, Bawani Khera corroborated the disclosure statements made by the accused during investigation, which were proved by SI Sukhvinder Singh (PW-10) as Ex.PJ, Ex.PK and Ex.PL. In these circumstances, their identification in the Court cannot be discarded and the objection of learned counsel for the appellants is liable to be rejected.

Another ground taken by learned counsel for the appellants is

that the recovery of Jeep was not made at the instance of the accused-appellants. The police was aware about the recovery of Jeep, which stood abandoned in front of the *dhaba* of Omkar Meena at National Highway No.8. As per disclosure statements made by the accused-appellants, they had boarded the jeep on 14.05.1998 at turning point of village Patodi and left the same near Kunda Barrier, from where it was got recovered. Hence, the prosecution version stood corroborated by the disclosure statements suffered by the accused-appellants themselves. The jeep in question, which was belonged to the complainant, was got recovered pursuant to the disclosure statements made by the accused-appellants, therefore, the said recovery was admissible under Section 27 of the Indian Evidence Act.

The prosecution has successfully proved that it was the present appellants, who had boarded the jeep on 14.05.1998 which was being driven by Mohinder Singh-complainant along with Sajjan Singh, conductor. The said jeep was recovered in furtherance of the disclosure statements made by the accused-appellants. Hence, the offence under Section 392 IPC was made out against them.

Having examined the impugned judgment, no illegality, much less perversity, has been found therein warranting interference by this Court.

Resultantly, both the appeals i.e. Crl. Appeal No.1896-SB of 2002 and Crl. Appeal No.1809-SB of 2002, are dismissed.

(RITU BAHRI)
JUDGE

31.03.2015
ajp