

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-S-1023-SB-2002
Date of Decision: 23.04.2015

Chatra S/o Chunni Lal

...Appellant

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

- 1. Whether Reporters of Local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

PRESENT: Mr. Bijendar Dhankar, Advocate for the appellant.

**Mr. M. D. Sharma, Assistant Advocate General,
Haryana.**

Raj Rahul Garg, J.

This is an appeal against judgment of conviction dated 03.06.2002 recorded by Sh. A. K. Raghava, the then Additional Sessions Judge, Sonapat, whereby accused Chatra-appellant was convicted for committing offences punishable under Sections 392 read with 397 and 458 IPC. Co-accused Jeet Singh, Azad Singh and Raju were declared proclaimed offenders. Vide order of sentence dated 07.06.2002, appellant-Chatra was sentenced to undergo RI for 7

years and to pay a fine of Rs. 500/- with default clause for committing offences punishable under Section 392 read with Section 397 IPC. He was also sentenced to under go RI for a period of 5 years and to pay a fine of Rs. 500/- with default clause for committing offence punishable under Section 458 IPC. These sentences were ordered to run concurrently. Benefit of Section 428 Cr.P.C. was also given.

Briefly, prosecution case is like this; that Yashwanti @ Ishwanti, wife of Ramesh, gave statement (Ex. P-1) to the Police while she was in the Civil Hospital, Ganaur. She stated before the Police that her husband is a Cultivator. He also does labour work of filling earth. On the day of occurrence i.e. intervening night of 7th and 8th June, 1999, her husband had gone to the village for labour work. Her daughter namely, Neetu, aged about 5 years, was suffering from fever. At about 1.00 AM in the night she gave medicines to her daughter Neetu. Thereafter, she came out of her house and sat on the cot. Another cot was lying in standing position nearby her cot. In the meanwhile, she saw that a person was hiding himself behind the aforesaid standing cot. Two persons came from the backside and stood at her back. Out of them, one had snatched her gold ear rings, gold chain and silver anklets. They started giving beatings to her. BEETA (a part of cot) which was lying near her cot was picked up by them and gave three blows on her head. The other two persons were having wirefitted Lathis in their hands. They gave Lathi blows on her left shoulder, left hand and hips. She raised alarm by shouting “**Maar diya-Maar diya**”. In the meanwhile, her husband Ramesh reached there on a tractor trolley. Thereafter, all the three persons had run away towards fields. She gave the identity of aforesaid three persons like this; that they were of wheatish complexion, medium height and were wearing underwear. She and her husband

also stated that they can identify them. She further stated that she saw them in the light of electric bulb as well the tractor light on the spot. She stated that she had seen the accused in aforesaid light and all the three accused were speaking local language. She further stated that she had come to know that these very accused had also inflicted injuries on the person of Rattan Singh, Sahab Kaur wife of Rattan Singh and Santosh, daughter of Rattan Singh. Rattan, Sahab Kaur and Santosh had also been brought to Civil Hospital, Ganaur by their relatives. On this report (Ex. P-1), SHO Inder Singh, PS-Ganaur, made his endorsement and sent to the Police Station through Constable Rajpal for registration of the case whereupon formal FIR (Ex. P-1/A) was recorded by ASI Anil Kumar. Statements of witnesses were recorded. Site plan of the place of incident at the house of Suresh Kumar was prepared as Ex. PK whereas that of Rattan Singh as Ex. PL and as that of Ramesh Chander as Ex. PM. By moving application before the doctor, his opinion was sought as to whether Yashwanti was fit to make statement or not, to which doctor opined that she was fit to make her statement. This application is Ex. PN. Likewise on the application Ex. PD/1 Rattan Singh, Santosh and Sahab Kaur were declared firstly as unfit for statement on 08.06.1999 but on 10.06.1999 they were declared fit to make statement. This opinion of the doctor is Ex. PD/2. Doctor had also sent opinion to Incharge of the Police Post regarding admission of Rattan Singh, Sahab Kaur and Santosh which is Ex. PD. MLR of Rattan Singh is Ex. PA, MLR of Santosh is Ex. PB whereas that of Sahab Kaur is Ex. PC. By moving application Ex. PE, opinion regarding nature of injuries on the person of Rattan, were sought whereupon doctor opined, vide opinion Ex. PF/1, that the nature of injuries on the person of Rattan are simple. Application Ex. PE/1 was moved for seeking opinion about the nature of injuries on the person of Santosh and application

Ex. PE/2 was moved for seeking opinion about the nature of injuries on the person of Sahab Kaur. Vide opinion Ex. PB, the nature of injuries were reported as simple, whereas, in opinion Ex. PF/3, fracture of mandible was found on the person of Sahab Kaur and injury was reported as grievous. MLRs of Yashwanti, Sunita and Suresh are Ex. PG, Ex. PG/1 and Ex. PG/2, respectively.

SI Ram Maher, PW-18, arrested accused Chatra-appellant on 13.06.1999. On interrogation, he made disclosure statement Ex. PH to the effect that he along with Ajaib Singh, Jeet Singh and Raju during the intervening night of 7th and 8th June, 1999 at about 1.00 AM, they snatched ornaments and cash by inflicting injuries with Gandasa, Iron Rod and Lathi on the person of ladies and gents. He further disclosed that from the first house he snatched gold ear rings from a lady and from the second house they snatched gold ear rings, gold chain and silver anklets from a lady and from the third house they snatched gold ear rings from a lady and after entering into her house one Mangal Sutra, two Pendants, one wrist watch make Citizen from the iron box were stolen. After committing this theft, they firstly went to their Dera and, thereafter, in the morning, they had gone to Uttar Pradesh. He further deposed that the entire stolen articles are with Ajaib, Raju and Jeet Singh. He can give Nishandehi of the place. Accused put his thumb impression on this disclosure statement. Constable Rajpal signed it as witness. Thereafter, accused got the place of occurrence identified whereupon SI Ram Maher prepared rough site plan regarding house of Ramesh as Ex. PR, house of Suresh as Ex. PR/1 and that of Rattan as Ex. PR/2. After completion of investigations, challan was put in the court against Chatra-appellant whereas co-accused Ajaib, Raju and Jeet Singh remained as proclaimed offenders.

Finding a prima faice case against accused-appellant Chatra he was chargesheeted for committing offence punishable under Sections 392/397 and 458 IPC to which he did not plead guilty and claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded whereby accused denied each and every allegation appearing against him and plead his innocence. It was also pleaded that he has been falsely implicated in this case by summoning to the Police Station from his house.

After hearing both the sides and appraising the entire material on record, the learned trial court recorded the judgment of conviction dated 03.06.2002 and passed the order of sentence dated 07.06.2002 as mentioned in the earlier part of this judgment.

I have heard Sh. Bijendar Dhankar, counsel for the appellant and Sh. M. D. Sharma, Additional Advocate General for the State of Haryana besides appraising the entire evidence and material coming on record.

This is a case in which three occurrences have been clubbed together. Ofcourse, Yashwanti, as PW-1, deposed in the FIR, Ex. P-1, herself, that she came to know about the injuries caused to Rattan Singh, Sahab Kaur and Santosh by the very accused who snatched her gold ear rings and inflicted injuries on her person. This is the case of the prosecution that Yashwanti and her husband Ramesh identified the accused in the light of electric bulb as well in the light of tractor trolly. As per Yashwanti, when the accused-appellant struck at her house Ramesh was not present in the house. When she raised alram Ramesh reached home on his tractor trolly. Yashwanti when appeared in the court did not state that the accused inflicted injuries on her person in the presence of Ramesh or that he had seen the accused. Ramesh, as PW-5,

categorically stated that he could not recognize the accused. He deposed that on the intervening night of 7th and 8th June, 1999, he was returning to his house at about 1.00 AM on tractor trolley. He saw four persons wearing underwear. He called them but they did not respond. He could not recognize them. Then he came to his house and found his wife in injured condition. She told him that three young boys wearing underwear had given her injuries and snatched gold chain, ear rings and silver anklets. Thus from the statement of Ramesh, it becomes clear that there was no person at the time of occurrence nor could identify the accused at the spot. He was told about the occurrence by his wife. As per Yashwanti, PW-1, the accused were three in number, whereas, Ramesh PW-5 deposed, when appeared in the court as witness, that he saw four persons wearing underwear. Even prosecution has also subsequently named four accused in this case. Thus, point of prosecution regarding number of accused involved in this case; is not consistent and not free from doubt. As per FIR Ex. P-1, which was recorded on the statement of Yashwanti, she was beaten up with BEETA which was lying near her cot and the remaining two accused were having wirefitted Lathis. Thus, the weapon of offence, as per Yashwanti, was wirefitted Lathis and BEETA which was lying at the spot itself. All the witnesses have improved their version regarding weapon of offence even Yashwanti as PW-1 has deposed that the accused was armed with Iron Rods. Disclosure statement, Ex. PH, recorded by the Police shows that accused were armed with Gandasa, Iron Rod and Lathis. Dr. S.S. Bhogal, who medico-legally examined Santosh, deposed that she suffered an incised wound which was muscle deep on her face and that injury was reported to have been inflicted by sharp weapon. Three injuries on the person of Sahab Kaur, which were incised wound, have also been reported as caused by sharp weapon. Likewise, Rattan

Singh also suffered incised wound, three in numbers. Thus, in order to co-relate medical evidence with oral evidence, the improvement in the weapon of offence was made. Firstly, by recording disclosure statement of Chatra-appellant as Ex. PH and subsequently with the deposition of prosecution witnesses.

Apart from above, the occurrence is of intervening night of 7th and 8th June, 1999 and accused Chatra was arrested on 13.06.1999. SHO Inder Singh PW-15, Investigating Officer of the case, and SI Ram Maher, PW-18, who partly investigated the case and also arrested the appellant-Chatra, did not depose as to how and under what circumstances he arrested Chatra as accused of this case. There is not even a whisper as to how the police came to know that Chatra and his associates had caused the present occurrence. Thus, the entire prosecution case becomes doubtful. Ofcourse, in this case test identification parade was not conducted. Chatra had refused to participate in the Test Identification Parade. Ramesh, PW-5, during the course of cross-examination deposed that only four persons were subjected to test identification parade which was held in the police station. He also deposed that after the arrest of the accused he had identified him. Thus, from the statement of PW-5 Ramesh it is explicit that accused Chatra-appellant was shown to him in police station, itself. Under these circumstances, when the police had already shown the accused to the witnesses, if accused had chosen not to participate in the test identification parade, no adverse inference can be drawn against him. It is the settled proposition of law that identification of accused, for the first time in the court, is no identification. In the case in hand, in FIR Ex. P-1, it finds mention that the accused were of wheatish color; they were of medium height and were wearing underwear. With this identification, it cannot be said that police could well be in a position to pin-point the accused Chatra as the accused of this case. There

is noting on record to show that accused Chatra was arrested in some other case or that at that time he made disclosure statement regarding present occurrence or the police received some secret information about the accused of this case.

Though the disclosure statement Ex. PH was recorded in this case, yet, the weapon of offence was not recovered nor the recovery of golden ear rings was got effected by accused-appellant. The simple disclosure statement that the articles of loot were with Ajaib, Raju and Jeet Singh is not enough. Thus, in the absence of recovery in pursuance with disclosure statement, Ex. PH, accused-appellant cannot be said to be connected in any way in this case.

As per FIR, Ex. P-1, accused were having wirefitted Lathis. These Lathis cannot be said to be deadly weapons. As such offence under Section 392/397 cannot be said to be made out. In this regard learned counsel for the appellant cited *Paviter Singh vs. State of Punjab 1992 (2) RCR (Criminal) 233*. Another judgment cited is *Sharvan Dashrath Datrange vs. State of Maharashtra 1998 (3) RCR (Criminal) 46*. In that case it was held by the Division Bench of Bombay High Court that where there is no evidence that accused used deadly weapon or caused grievous hurt or made attempt to cause death while committing robbery, offence under Section 397 IPC, is not made out. Another judgment on the point is *Sonu @ Chhotu and Anr. vs. State of NCT of Delhi and another, 2013 (1) Crimes 336*.

The accused of this very case had struck at three places on that very night. But the statements of other victims is also not in consonance with the prosecution story. Their statements are inconsistent on the point of number of accused involved in this case and also on the point of weapon of offence, the accused were carrying that very night.

The other places which the accused had struck that very night is

the house of Suresh from where they had snatched gold ear rings from Suneeta, wife of Suresh, and had taken away one Mangal Sutra, two pendants and one silver Pajeb besides one wrist watch make Citizen from the iron box lying in their house. Suresh, when appeared as PW-2, deposed that the accused have taken away one Rani Haar, one Pajeb, one watch and Rs. 3000/- in cash. Thus, his statement is not consistent with the prosecution case. Further as per PW-2, he deposed that there were three persons who were the assailants whereas per Gopal, PW-7, who reached the spot after hearing the noise, as per prosecution case, he saw accused-appellant along with three other persons. Thus, Gopal, PW-7, deposed that there were four assailants. This witness deposed that accused were armed with Iron Rods whereas Suresh, PW-2, did not state that assailants were armed with Iron Rods. PW-7 Gopal also stated that he had seen the accused in police station. Thus, from the statement of PW-7 Gopal, it becomes clear that accused appellant was already shown to the witnesses. Suneeta whose ornaments were snatched/stolen has not been examined as witness in this case.

Thus, from the above discussed statements of PW-2 and PW-7, prosecution case cannot be said to be free from doubt.

Third house which the accused had struck was that of Rattan Singh. Rattan Singh as PW-6 deposed that on the intervening night of 7th and 8th June, 1999 he along with his children was sleeping in front of his house, whereas Azad and his wife Sheela inside the house. At about 1.00 AM in the night, three-four persons hit him with Iron Rods and Lathi and they also gagged his mouth. They also caused injuries to Santosh and Sahab Kaur, his daughter and wife, respectively. Thus, accused had taken away ear rings from the ears of Santosh and Sahab Kaur and had also robbed of cash from the house. Injuries

on the person of Rattan Singh, as reported in MLR Ex. PA, were caused by sharp weapon. Dr. S. S. Bhogal, PW-3, deposed so. Rattan Singh PW-6 did not state that accused were having any sharp weapon at the time when they struck their house. In the absence of sharp weapon it is not known as to how the sharp injuries were caused to Rattan Singh as well as to Santosh and Sahab Kaur. The MLR of Santosh, Ex. PB, and as that of Sahabo Ex. PC have also been proved by Dr. S. S. Bhogal. Thus, the ocular testimony is inconsistent with medical evidence on record. Further PW-6 deposed that he could not say whether accused-appellant was amongst the assailants or not. Thus, involvement of accused Chatra in this case also becomes doubtful.

Santosh, daughter of Rattan Singh, appeared as PW-16. During the course of cross-examination, she deposed that accused were four in number. She further stated that she cannot identify the accused who had caused injuries to her. She also deposed that she does not know about the weapon of offence carried by the accused at that time. She further categorically stated that it was dark at that time. Sahab Kaur, wife of Rattan Singh, as PW-13, deposed about the number of assailants involved in this case as four. She deposed about the weapon of offence as Pharsa with which they caused injuries to her, her husband and daughter. During the course of cross-examination, she deposed that the assailants had run away from spot under the cover of darkness before arrival of her son as well the police. She further deposed that electric wires were already cut by the assailants prior to inflicting injuries upon them and further there was complete darkness when they received injuries. She further categorically stated that due to darkness it was difficult to recognize the person. Thus, with the statement of this witness, it becomes more clear that, infact, at the relevant time there was darkness. There was no light. As such question of

identification of accused by the victims does not arise.

Not only this but Azad singh son of Rattan Singh, PW-12, also categorically stated, during the course of cross-examination, that there was no electric bulb near the place of occurrence. He deposed that on hearing the noise coming from outside his house, he switched on his battery and ran outside. He saw four-five persons having 'Kulhadi' and 'Barchhi' and inflicting injuries to his father, mother and sister. Thus, when the statement of this witness was recorded by the police he deposed that the accused were armed with Iron Rods only. Then he was confronted with his statement Ex. DA on the point of weapon of offence. Likewise, he was also confronted with his statement Ex. DA on the point of number of assailants as in Ex. DA the number of accused given were three.

Thus, from the above discussed evidence on the file, it is clear that initially the prosecution case was against three accused but later on keeping in view the number of injuries inflicted on the person of victims and also the nature of injuries i.e. sharp injuries the improvement has been made regarding weapon of offence as well as the number of assailants, making the entire prosecution case highly doubtful.

Preparing of site plan of the houses of Ramesh, Suresh and Rattan, Ex. PR, Ex. PR/1 and Ex. PR/2, respectively, on the Nishandehi of accused also does not fasten the accused with this case as the aforesaid three places were already known to the police.

No other point was urged before me.

For the reasons recorded above, finding merit in this appeal, it is accepted and the judgment of conviction dated 03.06.2002 and order of sentence dated 07.06.2002 recorded by Sh. A. K. Raghava, the then Additional

Sessions Judge, Sonapat are set aside and the accused is acquitted of the charge for which he faced trial.

His bail bonds are discharged.

**(RAJ RAHUL GARG)
JUDGE**

23.04.2015

Waseem