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

**CRA-S-1650-SB of 2003 (O&M),
CRM No.65845 of 2012 AND
CRM-M-15747 of 2014
Date of decision: May 20, 2016**

Kalu and another

.....Appellants/Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: None for the appellants/petitioner.

Ms. Dimple Jain, AAG Haryana.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

A.B. CHAUDHARI, J

CRA-S-1650-SB of 2003 (O&M)

This criminal appeal is directed against the judgment and order dated 16.05.2003/23.05.2003 passed by the Additional Sessions Judge, Ambala City in Criminal Case No.55 of 2002 arising out of FIR No.50 dated 20.06.2001, by which the appellants, namely, Kalu son of Raghbir and Kanhaiya son of Ganga Ram were convicted for the offence punishable under Section 460 of the Indian Penal Code, 1860 (for short 'IPC') and Section 325 IPC and sentenced them to undergo imprisonment for eight years under Section 460 IPC and five years under Section 325 IPC, respectively with fine.

None appeared for the appellants when the appeal was called

out for hearing. The appeal relates to the year 2003 and the appellants are in custody.

Ms. Dimple Jain, AAG Haryana appears for the State of Haryana. With the assistance of learned AAG Haryana, I have perused the entire record, so also the reasons recorded by the learned trial Judge for making the impugned judgment and order of conviction and sentence against both the appellants.

The case of the prosecution is that on 19.06.2001, PW8 Smt. Sita Devi, the complainant, with her husband Ramu who was working in the Varshal Poultry Farm situated at village Mohra, were sleeping in their house. At about 3:30 AM, four persons opened the door of the house and came into the room. They were armed with *iron pipe, danda and sariya*. Two intruders had whitish complexion and were wearing *pant* and *kamij* and other two had beard and were also wearing *pant* and *kamij*. They opened the box and started throwing the things out from it. Upon hearing the noise, the complainant woke up, so also her husband. Then one of the intruders gave iron rod blow on the head of the husband of the complainant and he fell down on the bed. The other offender with knife weapon had inflicted a blow on the left side of the face of the complainant and dragged her out of the room. They were searching the room for the articles while the complainant kept raising the alarm. On hearing her noise, other servants of the poultry farm rushed to the spot. All the offenders ran away towards the fields after leaving their weapons at the spot. Husband of the complainant succumbed to injuries. After registration of the FIR, during investigation, both the appellants Kalu and Kanhaiya were arrested on 28.11.2001. They

disclosed about the offence they committed and also identified the place of occurrence. Other accused persons could not be arrested. Thereafter, charge-sheet was filed upon completion of the investigation.

During trial, the prosecution examined, inter alia, only one eye witness, namely complainant-PW 8 Sita Devi herself.

I have seen her evidence carefully. I have seen the findings recorded by the trial Judge in comparison with the evidence of PW8 Sita Devi. The main issue arises about the identification of the appellants-accused persons by her as the incident had taken place at 3:30 AM. The learned trial Judge discussed her evidence in Paras 38 and 39 of its judgment. The relevant portion of the same reads as under:-

“38. She has stated in a very straight forward manner that on 19.6.2001 at about 3.30 A.M. accused present in the court, were the persons who entered the room situated in a Varshal Poultry Farm, Mohra where she, her husband and children were sleeping by opening the chitkney of the door. She also stated that the accused persons were four in number and were carrying iron pipe, rods, dandas in their hands. They were young and two of them of blackish complexion wearing pent shirt and other two persons were having beard and hair and they were also wearing pent and shirt. She further deposed that they started removing the things from the trunk placed in the room. On the noise made by their activities, she and her husband woke up. When her husband Ramu (since deceased) got up from the coat, one of the intruder gave a pipe blow on the head of her husband, consequently her husband died on the spot. Other intruder gave a blow on her face with a churi like weapon and also threatened to kill her. They dragged her out from the room. When she raised the alarm to invite the other persons of the poultry farm, those assailants gave her kick

blows on her stomach and breast. She also deposed that she saw two persons standing near the wall of the poultry farm having weapons in their hands and they were also supporting the beard. She has testified that the intruders were six in number and on hearing her cries when the servant from the other poultry farm came at the spot, those intruders managed to run away in the fields. She has owned her statement Ex. PG which she made to the police. She identified the accused persons present in the court as those assailants and the intruders who had entered the room and had caused injury to her as well as to her husband who later on succumbed to the injuries.

39. She has categorically and in an unflattering manner has identified the accused persons as those offenders who had entered her room and looted the articles and in said course gave her the injuries and to her husband. Her statement qua the identification of the accused persons standing trial in the court as the offenders who committed the offence of house breaking and causing injuries to her and her husband remains un-displaced, un-disturbed and specific. In the cross examination the defence counsel has put to her a question as to whether the night of the occurrence was dark. She has frankly and in a very natural manner has replied the question in affirmative manner and admitted that it was a dark night. From this it cannot be concluded (as it is propounded by the defence side) that Sita Devi PW8 had no occasion to see the accused persons as the intruders as well as the assailants who caused the injuries to her and her husband in the course of transaction of house breaking. Therefore, her identifying the accused persons as the assailants cannot be regarded as insignificant and evidence carries no evidentiary value that she has identify the accused persons for the first time in the court. Her statement on this point cannot be excluded from consideration. The defence counsel has not clarified from Sita

*Devi PW8 that how would she able to see the accused persons.
No question qua the presence of light has been asked to her.
This would have put much more light on the aspect of
identifying the accused persons by her.”*

It is clear from the reading of the above reasons recorded by the learned trial Judge that the evidence of PW8 Sita Devi, though, solitary, was trustworthy, honest and truthful. I also find from the reading of her evidence that the incident went for quite some time as her husband was assaulted by the accused persons in her presence. Not only that, she had a fight with the accused persons who had struck her face with a knife like weapon. The accused persons were searching for the articles in the house for some time. There was thus, enough time for her to have reflection about the appellants' faces during the entire incident. She identified the accused persons before the Court as the assailants. The incident being of the month of June, there must be sufficient light at 3:30 AM particularly, because the complainant was also dragged out of the house after she was assaulted on the face by the accused persons. I therefore, do not find that PW8 Sita Devi could not have identified the appellants as argued by defence. Her evidence was not at all shattered and is consistent. The same is corroborated by the evidence of Dr. Alakh Nanda-PW1 who conducted postmortem on the dead body of her husband.

To sum up, I find that the trial Court rightly relied on the evidence of PW8 Sita Devi, though, she was solitary eye witness. The Court can record conviction based on the testimony of solitary eye witness. I therefore, do not find any perversity or infirmity in the impugned judgment and order of conviction and sentence.

In the result, the appeal filed by both the appellants deserves to be dismissed.

Hence, I make the following order:-

ORDER

CRA-S-1650-SB of 2003 is dismissed.

CRM No.65845 of 2012 and
CRM-M-15747 of 2014

This application and petition filed by Kalu son of Raghbir and Kanhaiya son of Ganga Ram respectively, are being disposed of by this common order.

Vide application (CRM No.65845 of 2012) and petition (CRM-M-15747 of 2014) under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Section 427 Cr.P.C., the applicant/petitioner Kalu and Kanhaiya, respectively, have prayed for ordering running of substantive sentences concurrently in three FIRs.

I have perused the application filed by Kalu dated 16.10.2012, i.e. CRM No.65845 of 2012 and petition filed, through jail, by Kanhaiya dated, i.e. CRM-M-15747 of 2014. The application filed by Kalu itself discloses that he was convicted and sentenced to undergo imprisonment for five years in FIR No.217 dated 15.08.2001, for offence punishable under Section 459 of Indian Penal Code, 1860 (for short 'IPC') and 25 of the Arms Act, 1954 (for short 'Act') and this Court dismissed his appeal against the conviction and sentence vide order dated 20.02.2008. He was again convicted and sentenced to undergo imprisonment for seven years for offence punishable under Section 459 IPC, in FIR No.487 dated 16.10.2001 and his appeal was also dismissed by this Court on 14.02.2007. He was also

convicted and sentenced to undergo imprisonment for ten years for offence punishable under 400 IPC and his appeal was dismissed by this Court on 04.07.2003.

Similar is the case of Kanhaiya son of Ganga Ram who is habitual offender and was sentenced in five cases. In the 1st case, he was sentenced to undergo imprisonment for eight years, in the 2nd case imprisonment for five years, in 3rd case imprisonment for seven years, in the 4th case imprisonment for ten years and in the last 5th case imprisonment for 5 years.

In both these application and petition, the grounds raised are that the applicants will have to suffer imprisonment ranging from 20 to 30 years, though, in different cases, in which they were convicted. The other ground is that the applicants are very poor and are growing in age and therefore, this Court should exercise power under Section 482 Cr.P.C. to make all the sentences concurrent. According to them, they have almost undergone actual sentence of about 11 years with remissions.

I have given careful thought to the plea made by both the applicants/petitioner Kalu and Kanhaiya. I have kept in mind the ratio laid down by the full bench of this Court in the case of **Jang Singh versus State of Punjab 2008(1) R.C.R. (Criminal) 323**. From the above facts, it is clear that both the applicants/petitioner Kalu and Kanhaiya are the habitual offenders and dangerous to the life of the people looking to the nature of offences for which they were convicted and sentenced. The full Bench of this Court in the case of **Jang Singh (supra)** finally stated thus, in Para 18 as under:-

“However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under Sections 482/427 Criminal Procedure Code The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Criminal Procedure Code would no more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be so available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Criminal Procedure Code What principle and consideration will govern the exercise of this discretion, as already noted above can not be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give an indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is

aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.”

In view of the above dicta laid down by this Court, in my opinion, both these applicants/petitioner Kalu and Kanhaiya do not deserve to be given the benefit of ordering all the sentences run concurrently.

In the result, I make the following order:-

ORDER

CRM No.65845 of 2012 and CRM-M-15747 of 2014 are dismissed. The prisoners be informed accordingly.

(A.B. CHAUDHARI)
JUDGE

May 20, 2016
mahavir