

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

CRA-S-1349-SB-2008

Date of decision: 29.1.2016

Rakesh Kumar @ Sunda @ Ramphal Nath

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Ms.Divya Sharma, Advocate for the appellant

Mr.Sandeep Vashisht, Deputy Advocate General, Haryana

SNEH PRASHAR, J.

This appeal is directed against the judgment of conviction / order of sentence dated 2.4.2008 passed by the Court of learned Additional Sessions Judge, Fatehabad whereby he convicted and sentenced accused-appellant Rakesh Kumar @ Sunda @ Ramphal Nath alongwith co-accused Nathu Ram to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.10,000/- each and in default of payment of fine, to further undergo simple imprisonment for six months for the commission of offence punishable under Section 394 read with Section 397 and 34 of the Indian Penal Code (for short 'IPC').

Shorn of all unnecessary details, the prosecution case is that

on 13.6.2006 a wireless message was received in Police Post, Bhirdana

from Police Station Bhuna regarding admission of Mitha Ram in an injured condition in Community Health Centre Bhuna. On receipt of the information, ASI Madan Lal alongwith other police officials reached CHC, Bhuna and asked for opinion of doctor for recording the statement of the injured, but he was declared unfit. On the next day i.e. 14.6.2006, ASI Madan Lal again went to the hospital and after taking opinion of the doctor, recorded the statement of injured Mita Ram. He stated that he was driver on the Tractor make Eicher bearing registration No.HR-22A-5972 of Balwant Singh, who was having a saw machine at Tohana Road. Balwant Singh was also engaged in taking contract of cutting trees and was having that contract in Village Dhabi Kalan. On 12.6.2006 at about 7.30 PM, after loading the wood in the tractor trolley he was coming from Dhabi Kalan to Bhuna. When he reached at Bhattu Kalan Chowk, one Nathu Ram accompanied by one more person gave him signal to stop the tractor. Allowing them to take lift on his tractor, he started again.

When they reached near Village Dhingsara, Nathu Ram got the tractor stopped for urination. When they returned back after ten minutes Nathu Ram had an iron rod in his hand. They boarded the tractor and he (complainant) started for Bhuna. After they had crossed Jhalania and reached near a water hut (Piau), Nathu and his companion asked him to stop the tractor. Nathu went towards the Piau. Meantime, the other person Rakesh @ Sunda, whose name he had come to know when he was chatting with Nathu during travelling, opened a 'saffa' tied

with the mudguard and put on his neck and brought him down. Nathu attacked on him with the iron rod and gave a blow on his back side. They pulled him with the 'saffa' and took him behind the 'Piau'. They caused several injuries to him and he became unconscious. They then took off his trouser (Pyjama) and putting the same in his head gave fire to it. Thinking that he had died, they ran away on the tractor trolley. When he regained consciousness, he found his mouth, hands and face burnt and the tractor -trolley was missing. On way to his house an unknown person gave him a piece of cloth to cover his naked body. After he reached home, he was taken to Govt. Hospital, Bhuna. Besides causing him injuries and taking away the tractor trolley Nathu Ram and Rakesh alias Sunda had also taken away Rs.10,000/- from his pocket.

On the statement of injured Mita Ram, First Information Report No.No.307 dated 14.6.2006 under Section 394 and 397 of the of the Indian Penal Code was registered at Police station Sadar Fatehabad against both the accused. They were arrested and on completion of investigation, a final report under Section 173 Cr.P.C. was filed in the Court.

Charges under Sections 397 and 394 read with Section 34 IPC were framed against both the accused, to which, they pleaded not guilty and claimed trial.

To substantiate its allegations, prosecution examined PW1 ASI Bal Kishan, PW2 Ranbir Singh Patwari, PW3 Mita Ram complainant, PW4 Dr.OP Dehmiwal, PW5 Balwant Singh, PW6 HC

Om Parkash, PW7 HC Mahender Singh, PW8 Dr.Chander Bhan, who proved MLR Ex.P13 of the complainant-injured, PW9 ASI Madan Lal, who partly investigated the case, and PW10 Hans Raj, Inspector, Investigation Officer of the case.

After closure of evidence of the prosecution, statements of the accused as envisaged under Section 313 of the Code of Criminal Procedure were recorded. They denied the incriminating evidence put to them and pleaded innocence. They deposed that nothing was recovered from them but led no evidence in defence.

Considering the submissions made by learned Public Prosecutor for the State as well as the counsel representing both the accused and evaluating the evidence brought on record, learned trial Court convicted and sentenced the appellant and co-accused Nathu Ram, as noted above. Feeling dissatisfied, the appellant filed the present appeal.

The submissions made by Ms.Divya Sharma, Advocate for the appellant and Mr.Sandeep Vashisht, Deputy Advocate General, Haryana have been heard and record perused.

It is submitted on behalf of the appellant that no test identification parade was conducted though appellant Rakesh Kumar @ Sunda was not known to the complainant. The alleged incident took place at about 8.30 PM on 12.6.2006, but the First Information Report was lodged on 14.6.2006 and there is no explanation for causing delay in lodging the report. In any case, as no deadly weapon was used by the

appellant, no case under Section 397 IPC was made out against him.

On the other hand, learned counsel appearing for the State submitted that evidence led by the prosecution is fully trustworthy and well established the charges against the appellant. Submitting that the learned trial Court has rightly convicted and sentenced the appellant, he prayed for dismissal of the appeal.

In his statement recorded on 14.6.2006 by ASI Madan Lal, PW3 injured Mita Ram specifically mentioned the names of both the assailants (including the appellant). When he appeared before the Court, he testified that Nathu Ram was previously known to him and Rakesh alias Sunda accompanied him. Both the accused remained with the injured for long hours before committing robbery. They chatted with him during travelling and he stated that Nathu Ram was taking his companion's name as Rakesh time and again. There was enough time for the complainant to see and know accused-appellant Rakesh Kumar. Moreover, the recovery of tractor trolley loaded with wood was effected from both the accused. Despite the fact that Nathu Ram was known to the injured-complainant, he did not utter a word to say that he had any enmity or ill will against him. Both the accused neither stated in their statements nor produced any evidence to show that they had been deliberately or falsely involved in the case. Thus, there was no reason for the injured to implicate the appellant falsely.

PW8 Dr.Chander Bhan, who medico legally examined Mita Ram injured on 13.6.2006, found the following injuries on his

person:-

1. Superficial to deep burn on face scalp and upper part of neck, injury was declared simple in nature.
2. Deep burn up to bone on palmer aspect of right hand with superficial to deep burn on dorsum of right hand and lower forearm with contused abrasion on forearm. Injury was kept under observation.
3. Multiple linear superficial abrasions on front of chest present in different directions, injuries was declared simple in nature.

The said doctor proved the MLR Ex.P13 and deposed that a ruqa was sent by him to the police station after admission of the patient. On 13.6.2006, the injured was not fit for making statement. On 14.6.2006 after the injured was declared fit for making statement, ASI Madan Lal recorded his statement and based on the same, the First Information Report was registered. Dr.Gulshan Kumar, opined that Injury No.21 was grievous.

In **Bhajan Singh @ Harbhajan Singh vs. State of Haryana 2011(3) RCR (Crl.) 641**, the Hon'ble Apex Court held as under:-

“Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained.

However, deliberate delay in lodging the complaint may prove to be fatal. In such case of delay, it also cannot be presumed that the allegations were an after thought or had given a coloured version of events. The court has to carefully examine the facts before it, for the reason, that the complainant party may initiate criminal proceedings just to harass the other side with mala fide intentions or with ulterior motive of wreaking vengeance. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law.”

In the case in hand, the incident took place at about 10.00 PM on 12.6.2006. Due to injuries, the complainant became unconscious and when he regained consciousness, he came to his house and thereafter, his family members got him admitted in the hospital on 13.6.2006. On the same day, the doctor, who treated him sent ruqa to the police, but on that day he was not fit for making statement. On 14.6.2006, when he was declared fit, his statement was recorded and First Information Report was lodged. Thus, the argument of delay in lodging the First Information Report does not hold any force.

Section 397 IPC reads as under:-

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.-If, at the time of committing

robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Here, the appellant put a safa (a piece of cloth) around the neck of Mita Ram to bring him down from the tractor. Other accused Nathu Ram was having iron rod with which, he gave blow to him from the back side. Besides inflicting injuries with fist blows and iron rod the appellant took off the trouser (Pyjama) of the complainant, put the same on his head and lit on fire. He became unconscious and treating him to be dead, the accused alongwith the tractor trolley fled away. The injured suffered burn injuries on his body. As per MLR injury no.21 was found to be grievous in nature. Accordingly, while committing the offence of dacoity, the appellant alongwith his co-accused caused grievous hurt to the injured and was rightly convicted and sentenced for commission of offence under Section 397 read with 34 IPC. The sentence awarded by learned trial Court warrants no intervention.

In the above premise, the present appeal being devoid of merit is dismissed.

29.1.2016
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter? Yes/No