

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

Crl. Appeal S-167-SB of 2001

Date of Decision : July 8, 2016

Naresh Kumar and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. D.S.Bali, Senior Advocate with
Ms. Neha Gupta, Advocate
for the appellant-Naresh Kumar.

Mr. Shiv Kumar Sharma, Advocate
for the appellant-Vijay Kumar.

Mr. Dilpreet Singh, Advocate
for the appellant-Amarjit Singh.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J.

The appellants, namely, Naresh Kumar, Vijay Kumar and Amarjit Singh alongwith Pawan Kumar were tried for committing the offences punishable under Sections 452 and 397 IPC. One Labh Chand was also tried for committing the offence punishable under Section 412 IPC. Vide judgment and order dated 16/17.11.2000, learned Additional Sessions Judge, Sirsa

convicted the appellants under Section 452 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each. They were also convicted under Section 392 read with Section 397 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- each. Labh Chand-accused was also convicted under Section 411 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-. Pawan Kumar-accused was, however, acquitted of the charges against him. In default of payment of fine or part thereof, the convicts were directed to undergo further imprisonment for a period of six months each. All the sentences were ordered to run concurrently. The period already spent by them in jail was ordered to be set off against the sentences awarded.

Aggrieved of their conviction and sentences under Section 452 IPC and Section 392 read with section 397 IPC, the appellants filed the present appeal. Their co-convict Labh Chand, who stood convicted and sentenced under Section 411 IPC, preferred Criminal Appeal S-1207-SB of 2000. During the pendency of the appeal, convict-Labh Chand died and, accordingly, Criminal Appeal S-1207-SB of 2000 filed by him was disposed of on 6.1.2016 by this Court as having abated.

The case of the prosecution, in brief, is that on

9.9.1998 complainant Jagdish Chander, goldsmith by profession was present at his shop and attending to his work whereas his children were away to the school as usual. His wife Smjt. Raj Bala was all alone in the house. When the complainant was on his way to his house for midday meal, he spotted his wife Raj Bala and neighbours Yashpal and Anil Kumar standing in the middle of a crowd. The time was about 2.30 p.m. Two young boys, namely, Naresh Kumar @ Bittu and Vijay Kumar @ Vicky stood overpowered by the crowd which was beating them. Smt. Raj Bala informed him that three young boys had trespassed into her house at about 2.00 p.m. They were armed with a knife and kappas and directed her to remove all her ornaments. When she raised an alarm, all three of them removed four gold bangles and one gold chain from her person and ran away. Yashpal and Anil Kumar, her neighbours responded to the alarm raised by her and succeeded in apprehending Naresh Kumar and Vijay Kumar, who disclosed the name of the third miscreant as Amarjit Singh Mehta, who had managed to give a slip to the people chasing him. Vijay Kumar, by taking advantage of confusion prevailing at the spot, also managed to escape. The complainant and his neighbours then handed over Naresh Kumar to ASI Jai Ram, who alongwith police party was present in the vicinity of Aggarwal Nursing Home, Mandi Dabwali. ASI Jai Ram recovered one knife from

Naresh Kumar and took it into possession vide recovery memo. Ex. PE. On the statement made by complainant Jagdish Chander on 9.9.1998 at 4.50 p.m., FIR No. 189 dated 9.9.1998 under Sections 392, 394, 34 IPC was registered at Police Station City, Dabwali by SI Sher Singh, Station House Officer, Police Station City, Dabwali at 5.00 p.m.

During the investigation of the case, the police set up pickets at different places for apprehending Vijay Kumar and Amarjit Singh. Vijay Kumar was arrested on that very day at Bathinda Chowk, Mandi Dabwali and datar recovered from his possession through memo. Ex. PD. During further investigation, it revealed that accused Pawan Kumar had conspired with Naresh Kumar, Vijay Kumar and Amarjit Singh to commit robbery at the house of the complainant when his wife would be all alone. Accordingly, Pawan Kumar was arrested for committing the offence punishable under Section 120-B IPC and so also Amarjit Singh on 15.9.1998. Pawan Kumar suffered disclosure statement Ex. PJ that his father was in possession of two gold bangles. Similarly, Amarjit Singh also suffered disclosure statement Ex. PH that he had kept concealed the other two bangles and one gold chain in his house. The aforementioned ornaments were subsequently got recovered by Pawan Kumar and Amarjit Singh. Labh Chand, father of accused Pawan Kumar was arrested on

18.9.1998 for committing the offence punishable under Section 412 IPC.

Upon completion of investigation and presentation of challan, followed by commitment of the case to the Court of Sessions, the appellants alongwith Pawan Kumar and Labh Chand were charged for the various offences, as mentioned above to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined SI Sher Singh as PW1, Constable Vakil Chand as PW2, Inspector Surinder Singh as PW3, Smt. Raj Bala as PW4, complainant-Jagdish Chander as PW5, Yashpal as PW6, Rajesh Kumar as PW7 and ASI Jai Ram as PW8 and after giving up PWs Anil Kumar and Constable Dharamvir closed its evidence.

When examined under Section 313 Cr.P.C., the accused claimed that they had been arrested in a totally false case. Naresh Kumar and Vijay Kumar were picked up from the Bus Stand, Mandi Dabwali on 7.9.1998 while they were waiting for a bus to go to Muktsar. Labh Chand claimed to have been implicated in a false case by the police. He had purchased jewellery from complainant Jagdish Chander which was found to be sub-standard. He lodged protest with the complainant, who compensated him with substantial sum of money. As a result

thereof their relations became strained. The gold ornaments had already been recovered by the police but they were subsequently planted on him. Accused Pawan Kumar also made similar statement.

When called upon to enter upon their defence, none of the accused led any evidence.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court convicted and sentenced the three appellants as well as Labh Chand, as mentioned above. However, Pawan Kumar was acquitted of the charges against him.

This Court has heard learned counsel for the parties and with their able assistance, minutely scanned the evidence available on the record.

From a conjoint reading of the testimonies of PW4 Smt.Raj Bala, PW5 Jagdish Chander and PW6 Yashpal, it is made out that there were material discrepancies between them. All of them tried to improve the case of the prosecution on each and every step. In her evidence, PW4 Smt. Raj Bala deposed that only Naresh Kumar was nabbed at the spot and not Vijay Kumar. She went on to add that it was Amarjit Singh, who was caught by the people on the same day. However, PW5 Jagdish

Chander and PW6 Yashpal Singh testified that both Naresh Kumar and Vijay Kumar were nabbed at the spot. It is also the case of the prosecution that Amarjit Singh was not arrested on 9.9.1998 rather he was arrested on 15.9.1998 whereas Vijay Kumar was apprehended on 9.9.1998 from Bathinda Chowk, Mandi Dabwali. If Amarjit Singh, who according to PW4 Smt. Raj Bala, was caught by the people on the same day i.e. 9.9.1998, whereas according to the Investigating Officer he was arrested on 15.9.1998, no implicit reliance can be placed upon the disclosure statement suffered by him on 16.9.1998 pursuant to which he got recovered two gold bangles and one gold chain. According to PW6 Yashpal, Naresh Kumar-accused was carrying a knife with him at the time of the occurrence and trying to defend himself from the attack of the mob with the help of that knife. On the other hand, PW5 Jagdish Chander testified that the knife was hidden by Naresh Kumar under his belt. Further, according to PW4 Smt. Raj Bala, Vijay Kumar and Naresh Kumar were apprehended by the people at a distance of 3/4 houses from her house and the public had, thereafter, taken them to the police and when the police came to record her statement, these two accused were also with the police. On the other hand, PW5 Jagdish Chander and PW6 Yashpal had deposed that when an attempt was made to nab Vijay Kumar, he had been successful in slipping

away from the scene. According to PW4 Smt. Raj Bala, her husband met her in the house for the first time whereas Jagdish Chander deposed that he met his wife at the place of occurrence where the crowd had gathered. According to the prosecution, the alarm raised by Smt. Raj Bala attracted Yashpal and Anil Kumar besides others. Out of them, Yashpal was examined by the prosecution as PW6, who testified that three young boys came running out of the house and out of them, Naresh Kumar was nabbed whereas Vijay Kumar succeeded in escaping. He further testified that Amarjit Singh was never seen by him at the spot. He admitted in his cross-examination that he was unable to identify Vijay Kumar when he was arrested from Bathinda Chowk. He also could not name any person from the crowd, who might have identified him. According to PW6 Yashpal, the police nabbed him and when he was given good amount of thrashing, he came out with all the facts. He went on to add that he did not know Vijay Kumar then. After Vijay Kumar, who according to the prosecution, had managed to give a slip to the crowd and was later on apprehended when he was trying to hide at Bathinda Chowk, PW6 Yashpal would not have been able to fix his identity especially when he did not know him.

Anil Kumar, who alongwith PW6 Yashpal had apprehended the accused at the spot, had not been examined by

the prosecution and given up as unnecessary. At the same time, one Rajesh Kumar, who lived in the vicinity of the house of Smt. Raj Bala was examined by the prosecution as PW7. He testified that he had seen 3/4 boys assembled in the vicinity of the house of Smt. Raj Bala but he did not take note of them and also did not identify all of them. However, a little while thereafter he was attracted to the scene on hearing screams of Smt. Raj Bala and learnt that she had been robbed by Naresh Kumar, Vijay Kumar and others. As PW7 Rajesh Kumar did not support the prosecution case, he was got declared hostile at the request of the learned Public Prosecutor and, thereafter, cross-examined during which he deposed that the crowd had succeeded in nabbing Naresh Kumar and Vijay Kumar after some chase but Vijay Kumar managed to slip away from there. Further, even Pawan Kumar whom he had seen alongwith three young boys standing there, also slipped away taking the benefit of the confusion prevailing there. This witness did not name accused Amarjit Singh to be present at the time of the occurrence or subsequently escaping from there.

It is the case of the prosecution that at the time of the occurrence, PW4 Smt. Raj Bala was wearing four gold bangles on her wrist besides gold chain around her neck. Further, the three culprits, who had entered her house and attempted to take

off all the ornaments which she was wearing, she resisted them and when the culprits tried to remove ornaments from her hand, a scuffle followed which continued for over five to ten minutes. The three culprits then collectively removed the gold bangles and gold chain which she was wearing on her person. She went on to testify that she had received scratches on her throat and hands and she had also shown those scratches to her husband. However, she could not state as to whether she had shown the injuries to the police or not. Apparently, PW4 Smt. Raj Bala was not got medically examined by the police. She tried to cover up this aspect by stating that her husband had brought the doctor to the house on the same day after some time though she did not remember his name. She also could not remember if the doctor had come before or after arrival of the police. Similarly, regarding Naresh Kumar-accused, who was overpowered by the crowd at the spot and was sent alongwith a Constable to Aggarwal Nursing Home for his medical examination, PW8 ASI Jai Ram had prepared injury statement but no medico-legal report in respect of Naresh Kumar has been brought on record nor even attached with the judicial file.

In view of the type of the evidence led by the prosecution, as discussed above, it would not be safe to sustain the conviction and sentences of the appellants.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellants are acquitted of the charges against them.

The appellants are on bail. Their bail bonds shall stand discharged.

July 8, 2016
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(T.P.S. MANN)
JUDGE