

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

(1) CRA S-1269-SB of 2016 (O&M)
Decided on: 03.12.2016.

Gurchetan Singh @ Kaka
Versus
State of Punjab
... Appellant
... Respondent

(2) CRA S-1334-SB of 2016 (O&M)

Nachattar Singh
Versus
State of Punjab
... Appellant
... Respondent

(3) CRA S-1376-SB of 2016 (O&M)

Jaspreet Singh @ Jassa
Versus
State of Punjab
... Appellant
... Respondent

(4) CRA S-1465-SB of 2016 (O&M)

Jaswinder Singh @ Neeta and another
Versus
State of Punjab
... Appellants
... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. L.S. Lakhanpal, Advocate,
for the appellants in CRA S-1269 of 2016 and CRA
S-1376-SB of 2016.

None for the appellant in CRA S-1334-SB of 2016.

Mr. Himanshu Puri, Advocate,
for the appellants in CRA S-1465-SB of 2016.

Mr. Mehardeep Singh, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned four criminal appeals arising out of the common judgment of conviction and the order of sentence dated 09.03.2016, passed by Additional Sessions Judge, Jalandhar vide which the accused-appellants were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
120-B IPC	RI for 5 years	Rs.5000/-	RI for 6 months
395 IPC	RI for 5 years	Rs.5000/-	RI for 6 months
324 IPC	RI for 2 years	Rs.1000/-	RI for 3 months

All the sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“Devoid of any unshorn details, the prosecution story is that on 16.04.2012, complainant Balbir Singh along with his son Anoop Singh had gone to the Sub Tehsil, Kartarpur in order to execute the sale deed regarding his land measuring 1 acre in favour of Balwinder Kaur wife of Satnam Singh, resident of

Village Dhirpur, Jalandhar. The complainant had stated that the sale deed was executed in favour of Balwinder Kaur and amount of Rs.17,70,000/- as sale consideration was received by him from the family of Balwinder Kaur. He had kept the said amount in the Dicky of his motorcycle and then started back towards his village. The motorcycle was being driven by the complainant and his son Anoop Singh was a pillion rider. It is stated by the complainant that when at about 5.45 p.m he reached near Adda Abadgarh, two clean shaven boys came from behind on a motorcycle. They were having *kirpans* in their hands and from behind they gave a *kirpan* blow on the head of his son due to which, his son Anoop Singh screamed as *mar ditta*. The complainant immediately stopped the motorcycle. In the meantime, a car make Indica bearing registration No. PB10AS 5824 having four occupants came there. Three of them were having kirpans and the fourth was having pistol in his hand. This accused gave kirpan blows on the person of his son as well as on his person. The accused hit them with kirpan blows on his hands and head. Blood started oozing out from the wounds and while going

from the spot, the assailants took away Rs.17,70,000/- lying in the Dicky of the motorcycle. The accused were aged between 25 to 28 years who can be identified if they are shown to the complainant. The complainant and his son raised *raula* on which Tejinder Singh son of Jaswinder Singh of the native village of the complainant and some other persons came at the spot. Tejinder Singh took the complainant and his son to Sacred Heart Hospital, Maqsuda for treatment. On the basis of this statement, *ruqa* was sent to the police station on the basis of which, formal FIR under Section 395 IPC and under section 25 of the Arms Act was registered at Police Station Maqsudan against unknown person. During the course of investigation, accused Nachattar Singh son of Satnam Singh was named in this FIR vide Rapat No.42 dated 16.04.2012 and offence under Section 120-B IPC was added. Thereafter during investigation, accused Jaswinder Singh @ Neeta, Paramvir Singh @ Rinku, Jaspreet Singh @ Jassa, Gurcharan Singh @ Kaka, Nachattar Singh and Rajinder Singh @ Happy were arrested in this case and Indica Car bearing registration No. PB-10-AS-

5824 was also recovered. On the basis of separate disclosure statements made by all the accused, separate amounts out of the total amount of Rs.17,70,000/- were recovered at the instance of the accused. The swords used by the accused were also recovered during the course of investigation. On completion of investigation, recovery of incriminating articles and arrest of accused, challan was presented before learned Illaqa Magistrate by SHO, PS Division Maqsuda, Jalandhar.”

On presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused, free of costs.

Charges under Sections 120-B, 395 and 307 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Balbir Singh, complainant, PW-2 Hardeep Singh, PW-3 Bhupinder Singh, PW-4 Dr. Alok Lalwani, Sacred Hospital, Maqsuda, PW-5, Inspector Som Nath, PW-6 ASI Manjit Singh, PW-7 Dalbir Singh, PW-8 Inspector Dharam Pal, PW-9 Inspector Angrej Singh, PW-10 Inspector Paramjit Singh, PW-11 HC Hari Chand, PW-12 Jaskamal, PW-13 ASI Gurmej Singh, PW-14 HC Gurjeet Singh and

thereafter closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court, vide impugned judgment and order dated 09.03.2016, convicted and sentenced the accused, as narrated above.

Feeling aggrieved against the judgment and order dated 09.03.2016 passed by the trial Court, the accused have filed the instant appeals.

It is submitted by the learned counsel for the appellants that the appellants were not identified by the complainant as the complainant turned hostile. The recovery witnesses, PW-1 Hardeep Singh and PW-2 Dalbir Singh have not supported the case of the prosecution. One of the accused, Rajinder Singh @ Happy has been acquitted by the trial Court, so the entire case of the prosecution should be taken with a pinch of salt.

On the other hand, the learned State counsel supports the judgment and the order passed by the trial Court.

I have heard the learned counsel for the parties and have gone through the case file.

In the instant case, the recovery of Indica car bearing registration No. PB-10-AS-5824 from the possession of the accused establishes the identity of the accused. Further, kirpans, different amounts of money extorted by the accused were recovered from the accused. The recoveries have been proved by Hardeep Singh Panch witness (PW-2), Dalbir Singh Panch witness (PW-7), Bhupinder Singh (PW-3), Inspector Dharam Pal (PW-8), Inspector Angrej Singh (PW-9), Inspector Paramjit Singh (PW-10), MHC Hari Chand (PW-11) and Jaskamal (PW-12). Bhupinder Singh (PW-3) has proved that he was previous owner of Indica car and had purchased the same from some dealer at Ludhiana. He further stated that on 19.01.2012 he sold the vehicle to Jaskamal Singh son of Ram Asra against sale consideration of Rs.40,000/-. Further, purchaser Jaskamal Singh (PW-12) has also stated that he sold the said Indica car to Gurchetan Singh i.e. the accused-appellant after 10-15 days of purchase. Inspector Dharam Pal (PW-8) has stated that on the 20.04.2012 he interrogated accused Jaswinder Singh, Paramvir Singh, Jaspreet Singh, Gurchetan Singh and Nachhtar Singh who suffered separate disclosure statements Ex. PW-8/K to Ex.PW-8/E respectively while disclosing that they had kept concealed separate amounts of money which came to their share at different places and they can get the same recovered after leading the police party to the said place. In pursuance to the disclosure statements, an amount of Rs.3,32,000/- was got recovered by accused Jaswinder

Singh @ Neeta, an amount of Rs.2,50,000/- was got recovered by accused Paramvir Singh @ Rinku, an amount of Rs.2,00,000/- was got recovered by accused Jaspreet Singh @ Jassa, an amount of Rs.2,68,000/- was got recovered by accused Gurchetan Singh @ Kaka and an amount of Rs.3,00,000/- was got recovered by accused Nachattar Singh. The accused have failed to give any satisfactory answer for possessing the amounts in question. Further, weapons of offence i.e. kirpans were also recovered at the instance of the accused vide recovery memos Ex.PW-6/M to Ex.PW-6/P. A copy of sale deed Ex.PW-6/V has been placed on record. Though, complainant-Balbir Singh, while appearing as PW-1 did not support the case of the prosecution but irrespective of his testimony, the prosecution has proved its case against the accused by way of circumstantial evidence. PW-4 Dr. Ashok Lalwani has proved twelve injuries on the person of the complainant, out of which injury No.11 was declared grievous and injury No.12 was declared dangerous to life. He has proved on record injury report, Ex.PW-4/A. It was further deposed by the doctor that on the same day, Anoop Singh, son of the complainant was also examined by him and noticed three injuries on his person out of which injury No.3 was found to be grievous in nature. So, the factum of injuries sustained by the complainant and his son stands proved.

Hon'ble the Supreme Court in **Attar Singh vs. State**

of Maharashtra 2013(2) RAJ 259 has held as under:-

“It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable.

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Thus, merely because a witness become hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the

accused.”

As per the ratio of judgment, the testimony of PW-1 Balbir Singh, complainant can still be relied upon. PW-1 has proved the factum of occurrence, extortion of money and causing of injuries by unknown persons. The disclosure statements and recovery memos have been proved by PW-10 SI Paramjit Singh, Inspector, who is an attesting witness thereof. The accused were found in possession of Rs.14,00,000/- but they have not offered any explanation for possessing such a huge amount. In the absence of any cogent explanation, a presumption emerges that the same was part of the amount extorted by them. The incident took place on 16.04.2012. The accused got recovered the extorted money on 20.04.2012 and 22.04.2012. The complainant received injuries on 16.04.2012. The kirpans were got re-covered by the accused themselves. The sale deed has been proved on record to reflect that the amount was in fact possessed by the complainant on that day. Taking all these factors into consideration, this Court feels that the prosecution has successfully proved its case against the accused beyond reasonable shadow of doubt. Consequently, the judgment of conviction is upheld.

Now reverting to the quantum of sentence, the offence under Section 395 IPC is punishable with imprisonment for life or with imprisonment for a term which may extend to ten years, the trial Court has already taken a lenient view in the matter and has

sentenced the accused to imprisonment for five years. The appellants are dacoits. No case for reduction of their sentence is made out. Consequently, the order of sentence is also upheld.

In view of above, the present appeals are dismissed. The appellants, who are on bail be taken into custody forthwith to suffer the remaining part of the sentence. Their bail bonds shall stand forfeited.

03.12.2016.
SN/vanita

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No