

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-3016-SB of 2012

Date of Decision : August 04, 2016

Kuldip Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present : Mr. Rahul Rampal, Advocate
for the appellants.

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

T.P.S. MANN, J.

The appellants, namely, Kuldip Singh and Jagjit Singh @ Jit Singh, residents of village Lalton, Police Station Sadar, Ludhiana have filed the present appeal for challenging the judgment dated 31.8.2012 and order dated 3.9.2012 passed by learned Additional Sessions Judge, Ludhiana whereby they were convicted under Sections 392, 397 and 458 IPC and sentenced as under :-

- (i) rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each under Section 392 IPC and in default of payment of fine, to further undergo rigorous imprisonment for two months;
- (ii) rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each under Section 397 IPC and in default of payment of fine, to further undergo rigorous imprisonment for five months; and
- (iii) rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each under Section

458 IPC and in default of payment of fine, to further undergo rigorous imprisonment for two months.

All the sentences were ordered to run concurrently. The period already undergone by them in custody was ordered to be set off against the substantive sentences imposed upon them.

According to the prosecution, on 6.6.2012 ASI Harbans Singh of Police Station Sarabha Nagar, Ludhiana after receiving wireless query to the effect that some unknown persons had entered the house of Gurmail Kaur and caused injuries to her, visited her house and recorded statement of Paramjit Kaur who stated that on 1.6.2002 her sister-in-law Bhinder Kaur and brother-in-law Kamaljit Singh had gone to village Himmatpura, District Moga for medical checkup and, accordingly, she had come to stay at their house. On the intervening night of 5/6.6.2012 at about 2.45 a.m., three persons, having dark complexion and wearing underwears and vests of dull colours came to that house after scaling over the wall. They were armed with weapons. They opened the door by breaking the net sheet with iron rods. On hearing the noise, Gurmail Kaur, mother-in-law of her sister raised an alarm. One of the intruders gave a blow with iron rod on the head of Gurmail Kaur, who fell down. The intruders warned her to keep quiet. They first removed gold ear rings of Gurmail Kaur and then the gold ear rings, gold finger ring and gold chhalla of the complainant. They also broke open the Godrej almirah and took cash and jewellery lying there. They searched iron-box and box-beds. When they were about to leave the house, Gurmail Kaur regained

consciousness and started raising an alarm, upon which they gave iron rod blow on her head. She again lost her consciousness and fell down. They intruders threatened the complainant with dire consequences before running away.

It is also the case of the prosecution that on the statement Ex.PA of complainant Paramjit Kaur, FIR No.171 dated 6.6.2002 was registered at Police Station Sarabha Nagar, Ludhiana under Section 458 IPC. During the investigation of the case Gurmail Kaur was medico-legally examined by Dr. Amanjit Singh on 6.6.2002 and two injuries were noticed on her person, one on the left parietal area and the other over nose. Kuldip Singh appellant and one Bhinder Singh were arrested on 19.11.2002 whereas Jagdish Singh appellant was arrested on 08.1.2004. On the basis of disclosure statement, Jagjit Singh got recovered iron rod, which was taken into possession. Upon completion of the investigation, final report under Section 173 Cr.P.C. was presented. The case was, thereafter, committed to the Court of Sessions. The two appellants as well as Bhinder Singh were then charged for committing the offences punishable under Sections 392 , 397, 458, 459 and 411 IPC, to which they pleaded not guilty and claimed trial.

It may be mentioned here that during the trial of the case, Jagjit Singh appellant brought to the notice of the trial Court that accused Bhinder Singh had died. Accordingly, after taking death certificate of Bhinder Singh and police report in that regard on record, the trial Court vide order dated 14.10.2011 passed an order of abatement of proceedings against Bhinder Singh accused.

In support of its case, against the appellants, the prosecution examined four witnesses.

PW1 Paramjit Kaur and PW2 Gurmail Kaur testified about the ocular account of the occurrence.

PW3 ASI Lakhbir Singh deposed about various steps taken by him during the investigation of the case, whereas PW4 R.N. Pandey, Supervisor, Medical Record Department, DMC and Hospital, Ludhiana produced original medico-legal register and proved carbon copy of MLR Ex.PW4/A pertaining to patient Gurmail Kaur, prepared by Dr. Amanjit Singh who had since left the hospital and his signatures were duly identified by him as he had been seeing him signing and writing. He also proved pictorial diagram showing the seats of injuries as Ex.PW4/B and photocopy of the bed head ticket as Ex.PW4/C. He also identified the signatures of Dr. Rachhpal, Dr. Parshant and Dr. Manish Goel, who had already left the hospital as he had been seeing them signing and writing.

ASI Harmesh Lal was given up being unnecessary, whereas Tejinder Singh, Record Keeper, DMC and Hospital, Ludhiana was given up as injury report had already been proved by Shri R.N. Pandey, Supervisor, Medical Records Department. Further evidence of the prosecution was closed by order on 13.8.2012 for the reason that the appellants were facing trial since the year 2004 and during the last eight years, the prosecution had availed numerous opportunities.

When examined under Section 313 Cr.P.C., both the appellants claimed that they were innocent and falsely implicated in

the case. In their defence they did not examine any evidence.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court acquitted them of the charges under Sections 411 and 459 IPC. However, they were convicted and sentenced for the offences under Sections 392, 397 and 458 IPC, as mentioned above.

After hearing learned counsel for the parties and scanning the evidence with their able assistance, this Court finds that though PW1 Paramjit Kaur and PW2 Gurmail Kaur described in detail the manner in which the occurrence had taken place and had also identified the appellants to be the ones who had attacked Gurmail Kaur, besides snatching of gold ornaments yet this Court does not feel convinced about the identity of the accused. PW1 Paramjit Kaur deposed during her cross-examination that the police had not got the accused identified from her. She also stated that she had not mentioned in her statement Ex.PA about the age, complexion, stature and any other distinguishing mark of the accused. Similarly, PW2 Gurmail Kaur testified that she had not stated about the names and description of the accused. Further, no identification was got done from her during the investigation. PW3 ASI Lakhbir Singh, who had arrested Jagjit Singh appellant on 8.1.2004 after obtaining production warrants from the Court did not state anything about subjecting said Jagjit Singh to test identification parade. ASI Harbans Singh, who had initially taken the investigation of the case subsequent to the registration of the FIR was not examined by the prosecution, despite availing numerous opportunities spread over eight years. He was the

one who could have stated about subjecting Kuldip Singh appellant and accused Bhinder Singh to test identification parade in order to fix the identity of the assailants. Even the learned trial Court in para 16 of its judgment has adversely commented upon the investigating agency in not taking keen interest in procuring presence of the witnesses and establishing the guilt of the appellants. Under these circumstances, this Court finds that the prosecution has failed to establish the identity of the appellants to be the ones who had committed the crime.

According to the prosecution, the accused had snatched gold ornaments from the persons of complainant Paramjit Kaur and Gurmail Kaur. Some of these ornaments were recovered during the investigation of the case. However, the police official, who had effected the said recovery has not been examined by the prosecution. PW3 ASI Lakhbir Singh did not depose about any recovery at the instance of Jagjit Singh appellant. According to him, Jagjit Singh appellant had suffered disclosure statement and then led the police party to the designated place from where he got recovered the iron rod. PW1 Paramjit Kaur admitted that the ring shown to her in the Court was not in a parcel, much less sealed parcel. She also admitted that the said ring had no specific identification mark. PW2 Gurmail Kaur remained silent about the recovery of any of her gold ornaments or the same being shown to her for identification.

As regards the recovery of the iron rod at the instance of Jagjit Singh appellant, suffice it to say that the recovery was effected after 1½ years of the occurrence. PW3 ASI Lakhbir Singh admitted in

his cross examination that place of recovery was an open place which was accessible to all. Such type of rod was available from any shop or any house. Further, the witness of recovery, i.e. Gurmail Singh son of Pritam Singh belonged to village Butari and the distance from village Butari and Police Station Sarabha Nagar, Ludhiana is 20-22 kilometers. PW3 ASI Lakhbir Singh also stated that he had not mentioned as to in what connection said Gurmail Singh had come from village Butari to Police Station Sarabha Nagar, Ludhiana. He went on to add that village Butari fell in the jurisdiction of Police Station Dehlon. During his cross-examination he stated that there was no mention of the accused being got identified from Paramjit Kaur or Gurmail Kaur. As is apparent from the memo regarding the recovery of iron rod, the said rod was not stated to be stained with blood. As such even the recovery of the rod at the instance of Jagjit Singh appellant does not make the prosecution case against the appellants probable.

In view of the above, this Court is of the view that the prosecution has not been able to prove its case against the appellants beyond all reasonable doubts.

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

August 04, 2016
satish

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO