

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision: 08.09.2016.

CRA-S-755-SB-2003

Sandeep Kumar @ Kala Singh and anotherAppellants.

VERSUS

State of PunjabRespondent.

AND

CRR-1565-2003

Anju BhatejaPetitioner.

VERSUS

Sandeep Kumar @ Kala Singh and othersRespondents.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. S.S. Sodhi, Advocate
for the appellants (in CRA-S-755-SB-2003) and
for respondents No.1 and 2 (in CRR-1565-2003).

Ms. Anju Arora, Advocate
for the petitioner (in CRR-1565-2003).

Mr. Surjeet Singh Chaudhary,
Deputy Advocate General, Punjab.

SNEH PRASHAR, J.

This judgment shall dispose of the appeal CRA-S-755-SB-2003
filed by appellants Sandeep Kumar @ Kala Singh and another and CRR-
1565-2003 filed by petitioner Anju Bhateja (complainant), as the same had
arisen out of the judgment of conviction and order of sentence dated
07.04.2003 recorded by learned Additional Sessions Judge, Fast Track

based on First Information Report No.66 dated 05.10.2000 registered at Police Station City Fazilka whereby the appellants were held guilty and were convicted and sentenced for commission of offence under Sections 392, 452, 323 read with Section 34 of the Indian Penal Code (for short “IPC”) as under:-

Name of the convict	Under Section	Rigorous imprisonment	Fine	In default of payment of fine Rigorous imprisonment
Sandeep Kumar	392 IPC	Three years	Rs.1000/-	Three months
-do-	452 IPC	Two years	Rs.500/-	Three months
-do-	323/34 IPC	Six months	--	--
Ankur	392 IPC	Three years	Rs.1000/-	Three months
-do-	452 IPC	Two years	Rs.500/-	Three months
-do-	323 IPC	Six months	--	--

It was ordered that all the sentences awarded to each of the convict shall run concurrently.

The case of the prosecution garnered from the record was as under:-

Smt. Anju Bhateja (complainant) was married to Ashwani Kumar son of Girdhari Lal Bhateja of Fazilka. They had two children born out of the wedlock. Both were studying. Ashwani Kumar was running a shop of Commission Agent in New Grain Market, Fazilka. On 05.10.2000, when both the children were away to school, Ashwani Kumar had gone to his shop and Anju Bhateja was alone in the house, at about 11:30 a.m.,

somebody rang bell of the house from outside. She opened the door and found two unknown men, one in the age group of 28-29 years and the other in 27-28 years standing outside the door. She enquired the purpose of their visit on which one of them told her that he wants to meet her husband whom he addressed as 'uncle'. She went to her drawing room to telephone her husband. In the meantime, the men entered the house and one of them caught her from her arms and the other started pressing her neck. Both of them forcibly took her in the bedroom and threw her on the bed. They snatched the four gold bangles she was wearing in her hands and also took out one gold ear topas. As she tried to raise alarm, they took up a wire of an electric iron and put the same around her neck and pressed the same. Thereafter, both the assailants ran away through the stairs of her house. She got up and came at the gate of the house. Incidentally, her husband Ashwani Kumar arrived. She disclosed the entire occurrence to him. He arranged a vehicle and brought her to Civil Hospital, Fazilka where she was medico legally examined. The weight of the snatched bangles and topas was said to be 4.5 tolas which had been given to her by her parents at the time of marriage.

The occurrence was reported to the police. On the statement (Ex.P16) of the complainant, First Information Report (Ex.P19) was registered under Section 382/34 IPC. Investigation commenced. On 06.10.2000, Section 397 IPC was added to the case. On 08.10.2000, when Sub Inspector Prem Kumar alongwith his official companions and Ashwani Kumar were present near the gate of Grain Market, appellants Sandeep Kumar and Ankur were arrested. During interrogation, appellant Sandeep

recovered two gold bangles concealed by him near the wall of cremation ground. Appellant Ankur also suffered a disclosure statement and on the basis of the same got recovered two gold bangles lying concealed by the side of the tower near Kashi Park, Fazilka. One iron cutter was also recovered from appellant Sandeep Kumar. The appellants were got medico legally examined and were produced before Magistrate with a request for their test identification parade but they refused to participate on the ground that they had already been shown to the witnesses. On completion of investigation, final report under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was submitted before the Court.

The appellants were charge-sheeted under Sections 307, 392 and 452 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

The prosecution examined as many as ten witnesses, namely, PW1 Radhey Sham, PW2 Dr. Hans Raj, PW3 Dr. Yashpal, PW4 Mathra Dass, PW5 Ashwani Kumar, PW6 complainant Anju Bhateja, PW7 Om Parkash, PW8 SI Prem Kumar, PW9 Dr. I.M. Challana and PW10 Dr. N.K. Sethi.

After closure of evidence of the prosecution, statements of appellants under Section 313 Cr.P.C. were recorded by putting to them the incriminating evidence available on record which they negated and claimed to be innocent.

Analyzing the evidence available on record and the submissions made by learned Additional Public Prosecutor and learned counsel representing the appellants, learned trial Court convicted and

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 07.04.2003 passed by learned trial Court, the appellants preferred appeal CRA-S-755-SB-2003 and the petitioner-complainant filed CRR-1565-2003.

The submissions made by Mr. S.S. Sodhi, learned counsel representing the appellants, Ms. Anju Arora, learned counsel representing the complainant-petitioner and Mr. Surjeet Singh Chaudhary, Deputy Advocate General for the State of Punjab have been heard and record perused.

At the first instance, based on the testimony of complainant-victim Anju Bhateja, a First Information Report under Section 382 read with Section 34 IPC was registered. Subsequently, during investigation Section 397 IPC was added to the case. The appellants were arrested and recovery of the looted gold bangles was made from them and after submission of final report by the prosecution the appellants were charge-sheeted under Sections 307, 392 and 452 read with Section 34 IPC. Ultimately, after trial while disposing of the case on merits, learned trial Court convicted and sentenced the appellants under Sections 392, 452 and 323 read with Section 34 IPC and acquitted them of the charge under Section 307 IPC.

To begin with, learned counsel for the appellants argued that the facts and evidence available on record would indicate firstly that the appellants were falsely implicated and secondly that commission of offence under Section 392 IPC or 452 IPC was not made out against them. Learned counsel asserted that as per story of the prosecution the appellants were arrested by the police on identification by Ashwani Kumar, husband of

complainant or Ashwani Kumar prior to the occurrence nor Ashwani Kumar had seen them at the time of occurrence. He was only told about the incident by his wife Anju Bhateja when he came home i.e. much after the assailants had left the spot. Ashwani Kumar, who appeared as PW5 could not explain how he was able to identify the appellants. The appellants after they were produced in the Court for the first time, had refused to participate in the identification parade applied for by the police as they both stated that they had already been shown to the witnesses. For the said reason, identification of the appellants for the first time in the Court by the complainant was insufficient and incompetent for proving that the appellants were the persons who intruded in the house of the complainant and looted her.

Elaborating his argument, learned counsel contended that even according to the prosecution, the appellants were not armed with any weapon at the time of occurrence, which means they had made no preparation to cause any harm or injury to the complainant. They also did not wrongfully restrain the complainant when they entered her house or left the same. In her statement Ex.P16, which formed the basis of First Information Report, the complainant did not state that the appellants possessed an iron cutter with which they cut the bangles and removed the same from her hands. She also did not mention in the First Information Report that when the assailants were trying to strangle her, she raised resistance and a scuffle took place between her and the assailants during which she caused scratches on the face of one of the assailant with her nails. Substantially improving upon her version, the said facts were brought in by the complainant during her deposition in order to match the medical

her testimony and conduct appears to be strange and unnatural. She did not raise shouts to attract the attention of the neighbours or of the people in the street when the assailants were trying to flee away from the spot. Had she been looted, she would not have kept quiet and waited for her husband to return home so that she could disclose the occurrence to him. Learned counsel urged that the testimony of the complainant and her husband is completely untrustworthy.

On the other hand, learned counsel for complainant Anju Bhateja, referring to the statement of PW10 Dr. N.K. Sethi, who had medico legally examined the complainant on 05.10.2000 after the occurrence, pointed out that as per medico legal report Ex.P27 proved by PW10 four injuries were found on the person of the complainant. Injury No.1 to 3 were declared simple in nature but injury No.4, which was on the neck, was kept under observation. On the very next day i.e. 06.10.2000 on an application Ex.P21 given by the police to know the nature of the injuries suffered by the complainant, PW10 gave his opinion Ex.P28 that possibility of the injury around the neck of the complainant 'being dangerous to life' and being possible by putting a wire around the neck, could not be ruled out. Based on his clinical observation, he also gave report that injury No.4 was grievous in nature. It was specifically mentioned by him in the medico legal report that the voice of the complainant was hoarse and bleeding from throat was present. Learned counsel asserted that such being the condition of the complainant after the incident, learned trial Court had wrongly acquitted the appellants under Section 307 IPC.

As presented by the prosecution, it was a case of daylight

husband Ashwani Kumar prior to the occurrence. It is also a fact that PW6 complainant stated that the appellants had fled away before arrival of her husband. In other words, PW5 Ashwani Kumar, husband of the complainant was not an eyewitness to the occurrence and had also not seen the assailants. However, it cannot be ignored that PW5 Ashwani Kumar stated that when his wife narrated the occurrence to him, she told him that she can identify the assailants if brought before her. He also stated the identification details of the assailants to the police and it was on the basis of the same that the appellants were apprehended in his presence.

In any case, identification of the appellants as 'the robbers' was not merely dependent upon their identification by PW5 Ashwani Kumar. The star witness of the prosecution in that context was PW6 complainant Anju Bhateja. No doubt, the appellants were not known to the complainant prior to the occurrence but it is not a case where the complainant did not have sufficient time and opportunity to see them during the occurrence that she could not have been in a position to identify them later. When the appellants appeared at the door of the house of the complainant, she talked to them and asked them the reason of their visit on which one of them addressing her husband as an 'uncle' told her that he was to meet him. The complainant then went inside her house to telephone her husband but the appellants followed her. They then caught her, took her to the bedroom, tried to strangle her, removed the gold bangles she was wearing by cutting the same, also removed one of her ear ring and then when the complainant tried to raised shouts they pressed her neck with an electric iron wire and fled away. When all this was happening, it was broad daylight

complainant had sufficient time and opportunity to keep a mental record of the identity of the assailants. She told her husband that she was in a position to identify the assailants if brought before her. When she appeared in the witness box in the process of recounting the occurrence she not just identified the appellants as the robbers but also specifically mentioned that when the appellants followed her inside the house, appellant Sandeep Kumar held her by arms and the other appellant Ankur started strangulating her by pressing her neck. Identification of the appellants by her in the Court constituted the substantive evidence for proving their identity.

The appellants were arrested on 08.10.2000. During interrogation, each of them suffered disclosure statements and in pursuance of the same they got recovered two bangles each which they had cut and removed from the hands of the complainant. As proved by PW2 Dr. Hans Raj Medical Officer, on 08.10.2000 appellant Ankur was produced before him for his medical examination. He stated that the face of the appellant was muffled when he was brought before him. For medical examination, he got his face unmuffled and thereafter his face was remuffled. It is also in his statement that no other person was present when he examined the appellant. Similar was the position with regard to appellant Sandeep Kumar, who was medico legally examined by PW9 Dr. I.M. Challana, Senior Medical Officer on 09.10.2000. The appellants were produced before the Magistrate on 09.10.2000 with muffled face. Refusing to participate in the test identification parade the appellants stated that they had been shown to the witnesses but they did not mention when after arrest the Investigation Officer had shown them. In fact, there was no occasion for the complainant-

were produced in the Court. In any case, it has been held by Hon'ble Supreme Court in **Musheer Khan @ Badshah Khan & Anr. vs. State of Madhya Pradesh, 2010 AIR (SC) 762** that the evidence in test identification parade does not constitute substantive evidence and these parades are governed by Section 162 Cr.P.C. and the weight to be attached to the identification is a matter of assessment for the courts.

Reverting to the instant case, it has been discussed in detail above that identification of the appellants by complainant Anju Bhateja when she appeared in the witness box in the Court was credible and trustworthy. Refusal by the appellants to join the test identification parade was without any reasonable and plausible cause.

The testimony of the complainant identifying the appellants as the robbers stood corroborated by recovery of two gold bangles from each of the appellants in pursuance of their respective disclosure statement made during interrogation. The gold bangles recovered from each of the appellants were identified by the complainant-injured as well as her husband PW5 Ashwani Kumar who was present with the police party at the time when the appellant suffered disclosure statement as well as when in pursuance of the same they got the bangles recovered from the respective places where they were kept concealed. In that manner, there remained no doubt with regard to identity of the appellants being the persons who had robbed the complainant by intruding in her house.

Coming to the submission made by learned counsel for complainant-petitioner Anju Bhateja that the appellants had been wrongly acquitted under Section 307 IPC, there appears to be no force in the same.

following were the injuries found on her person:-

- “1. A lacerated wound of 1.0 cm x 0.2 cm on left eyebrow. Fresh bleeding was present.*
- 2. Oedema below the left eye with evidence of sub conjunctival haemorrhage. Colour red 5.00 cm x 3.00 cm.*
- 3. An abrasion on left side of chin 2.00 cm x 0.3 cm. Oozing of blood present.*
- 4. Diffuse oedema of the neck on its front with abrasion overlying. Tender. Sizes of the abrasions 2.5 cm x 0.5 cm, 2.00cm x 0.5 cm and 1.5 cm x 0.5 cm on upper, middle and left side of root of neck (kept under observation).”*

Injury No.4 was declared as 'grievous in nature' by PW10 Dr. N.K. Sethi vide his report Ex.P29 dated 24.11.2000 i.e. after about 1½ months of the occurrence. At the time of examination, he had mentioned in the medico legal report Ex.P27 that injury No.4 had been kept under observation. It is after about 1½ months on 24.11.2000 that the said injury was declared as 'grievous'. The doctor did not state or prove any of his noting or finding on the Bed Head Ticket of the complainant which prompted him to declare the injury as 'grievous' after such long time. He stated that the complainant remained under his treatment from 05.10.2000 to 09.10.2000 and thereafter he had never examined her. He also admitted that he had not gone through the medico legal record of the complainant relating to Medical College, Faridkot. Such being the factual position, his mere noting on Ex.P29 that keeping the patient under clinical observation his opinion was that the injury was 'grievous', cannot be believed when he had

mentioned the details of the clinical observations. Learned trial Court rightly held that there was nothing in the statement of PW10 Dr. N.K. Sethi to bring injury No.4 within the mischief of definition of 'grievous hurt' as enshrined in Section 300 IPC.

Similarly, it was not the opinion of PW10 Dr. N.K. Sethi that either of the injuries suffered by complainant Anju Bhateja was 'dangerous to life'. The opinion sought from him was whether by putting the electric iron wire around the neck of the victim and by pressing the same was 'dangerous to life' and the opinion given by him was that "possibility could not be ruled out". Apparently, a vague query was put to the doctor and the answer given by him was also completely vague and imaginative. Such an opinion cannot be made basis to record a finding that the injury suffered by the complainant was 'dangerous to life'. Thus, in my considered opinion learned trial Court rightly acquitted the appellant under Section 307 IPC.

There is further no force in the argument of learned counsel for the appellants that complainant Anju Bhateja and her husband Ashwani Kumar had made substantive improvements in their statements when they appeared in the Court. Indeed, in the First Information Report, complainant Anju Bhateja had not stated that the appellants had cut the bangles she was wearing with an iron cutter for removing the same from her hands, but she stated so when she appeared in the witness box. An iron cutter was recovered from underneath the belt of the trouser worn by appellant Sandeep Kumar. The version of the complainant was that the bangles were cut and removed from her hands. The bangles recovered from the appellants were in cut condition. Likewise, the omission in the First Information

to use of force the appellants too had suffered some injuries and one of the appellant had suffered scratches on face with the nails, has no bearing on the merits of the case. These were, in fact, minute details of the occurrence which the complainant stated while recounting the occurrence during her deposition. The appellants after their arrest were taken for medico legal examination and some minor injuries were found on their person. The main purpose of the First Information Report is to satisfy the police officer as to the commission of a cognizable offence in order to set the criminal law into motion. It may not be possible to give every minute detail with unmistakable precision in the First Information Report. Undisputedly, the First Information Report is not the proof of the case but is a piece of evidence which could be used for corroborating the case of the prosecution. In other words, the First Information Report need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case as was so held by Hon'ble Supreme Court in **Jitender Kumar vs. State of Haryana, 2012 AIR (SC) 2488.**

It cannot be said that the conduct of the complainant after the occurrence was strange or unnatural because she did not chase the appellants and did not raise shouts to attract the people in the neighbourhood. PW6 complainant-injured stated that after the accused left her house, she remained puzzled for about 5-6 minutes. She had been caused hurt by the appellants and had been robbed of her gold bangles. They had also removed her one ear ring but that of course was found by her in the bed lateron. It was natural that the complainant took time to recover from the shock of being robbed in her house. Thereafter, as stated by her when

home and she narrated the occurrence to him. The complainant and her husband did not inform the police on telephone but straight went to the hospital and on arrival of the police in the hospital lodged a complaint.

In the above premise, it is held that the evidence led by the prosecution established beyond all shadows of reasonable doubt that the appellants had committed the offence punishable under Sections 392, 452 and 323 read with Section 34 IPC.

Accordingly, the judgment of conviction recorded by learned Trial Court is upheld. As regards sentence awarded to the appellant, it appears to be adequate. Thus, there being no merit in the appeal as well as in the revision, both are hereby dismissed.

The appellants are on bail in this case, their bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

08.09.2016.
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