

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

Criminal Appeal No.S-1427-SB of 2005

Date of Decision : May 31, 2017

Sandeep

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. Kapil Aggarwal, Additional A.G., Haryana.

T.P.S. MANN, J.

The appellant was tried for committing offences punishable under Section 392 read with Section 397 IPC. Vide judgment and order dated 8/11.7.2005, learned Additional Sessions Judge, Panipat after holding him guilty for the said offences, convicted and sentenced him to undergo rigorous imprisonment for seven years.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 25.8.2005. Subsequently, on 22.9.2006, his sentence of imprisonment was suspended.

According to the prosecution, on 7.5.2004 complainant Smt. Roshni went to the jungle within the area of village Matlaudha for bringing fuel wood. At about 2.30 p.m., when she was cutting the wood, the appellant, accompanied by one more boy, who was,

later on, identified as Sandeep, came there. The appellant snatched the axe, which she was carrying for cutting the wood and with the aid and assistance of his co-accused Santosh, removed the gold ornaments, i.e. ear rings, nose pin and pendant, which she was wearing and, thereafter, gave her injuries with the axe on her head, neck and back. On receiving the injuries, she became unconscious. She was all alone at that time. At about 1.30 a.m., i.e. after about 10/11 hours, she was brought to Civil Hospital, Panipat by her neighbours where she was medico-legally examined. The doctor sent ruqa to the Police Station regarding her admission. As she had suffered serious injuries, she was referred to PGIMS, Rohtak for further management where she remained admitted upto 21.5.2004. On radiological examination, depressed fracture of left frontal and parietal bone was detected. On CT scan, multiple areas of hypodensities in right cerebral hemispheres were found which were non-hemorrhagic contusions. Hemorrhagic contusions were seen in right cerebral hemisphere. There was effacement of sulci on right side. Right lateral ventricle was affected. Pneumocephalus was seen on left parietal region.

It is also the prosecution case that on receipt of the ruqa, ASI Jai Bhagwan from Police Station, Matlaudha reached the hospital and presented application to obtain opinion of the doctor regarding fitness of the complainant to make a statement. The doctor vide an endorsement declared her unfit. ASI Jai Bhagwan again visited the hospital on 8.5.2004 at 1.00 p.m. to seek similar opinion but by that time she had already been referred to PGIMS,

Rohtak. ASI Jai Bhagwan then went to PGIMS, Rohtak and presented an application for the same purpose. She was again declared unfit. Similar opinion was, thereafter, given on 12.5.2004. On 23.5.2004, ASI Jai Bhagwan was present within the area of Ram Nagar when he came to know that the injured stood discharged from PGIMS, Rohtak and was present at her house. Accordingly, he went to her house and recorded her statement on the basis of which FIR No.69 dated 23.5.2004 under Sections 324, 392 and 394 IPC was registered at Police Station, Matlaudha. During the investigation of the case, ASI Jai Bhagwan arrested the appellant, who, on interrogation, suffered disclosure statement that the ornaments which he and his co-accused had removed from the person of the complainant were sold to a jeweler of Haridwar for Rs.2,200/-. Further, the said amount was distributed between both of them which had been spent. He also disclosed that the axe used for committing the crime was kept concealed by him under a heap of straw in the jungle and offered to get it recovered. Santosh accused was also arrested and pursuant to the disclosure statement got recovered the axe from the disclosed place. On 23.5.2004, both the accused suffered disclosure statement that they had sold ornaments to a jeweler of Delhi and not to a jeweler of Haridwar. Santosh accused was found to be juvenile and, accordingly, charge sheet against him was submitted before the Juvenile Court. Separate charge sheet was presented against the appellant before the Ilaka Magistrate. The case was, thereafter, committed to the Court of Sessions where he was charged under

Section 392 read with Section 397 IPC and Section 307 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Yogesh Gupta, Radiologist, who stated that on 7.5.2004 he radiologically examined the injured and found depressed fracture on left frontal and parietal bone and increased pre—vertebral space opposite upper cervical vertebra. On CT scan, he found multiple areas of hypodensities in right cerebral hemispheres non-hemorrhagic contusions. There was effacement of sulci on right lateral ventricle. He proved X-ray report Ex.PA and CT scan report Ex.PA/2.

PW2 Sukhbir Singh, Medical Record Technical, PGIMS, Rohtak brought the medical treatment record of the complainant and placed the same on the judicial file.

PW3 Dr. Y.P. Singhmar, Medical Officer, Bhim Sain Sachar General Hospital, Panipat deposed that on 8.5.2004 at about 1.30 a.m. he had medico-legally examined Smt. Roshni and found the following injuries on her person :-

- “1. Three lacerated wound 2.5 x 0.5 x 0.5 cm on left lateral aspect of head anteriorly. X-ray was advised.
2. Lacerated wound 4.0 x 1.0 x 0.5 cm on left side of forehead. X-ray was advised.
3. Incised wound 2.0 x 1.0 cm muscle deep on left lateral aspect of neck upper part. Surgeon's opinion was advised.

4. Incised wound 6.0 x 2.0 cm muscle deep obliquely placed in right anterior lateral aspect of neck upper part. Surgeon's opinion was advised.
5. Incised wound 2.5 x 1.0 cm muscle deep on right anterior lateral aspect of left lower half part. Surgeon's opinion was advised.

Clotted blood was present in all the injuries. Injuries No.1 and 2 were caused by blunt weapon and rest of the injuries were caused by sharp edged weapon within probable duration of 24 hours."

He proved copy of medico-legal report as Ex.PB and ruqa Ex.PB/1 which he had sent to the Police Station regarding admission of the complainant. He further deposed that on application Ex.PB/2 moved by the police on 8.5.2004, he had declared the complainant unfit to make a statement. On 16.7.2004, he gave opinion Ex.PB/5 on the application Ex.PB/4 moved by the police that injuries No.3, 4 and 5 could be caused by kulhari shown to him.

PW4 Constable Jasbir Singh, Draftsman, proved the scaled site plan Ex.PC which he had prepared on 28.5.2004 after visiting the place of occurrence.

PW5 HC Brij Pal deposed about the delivery of the special report to the Ilaqa Magistrate.

PW6 Roshni deposed in terms of the prosecution case. According to her, the appellant had snatched the axe from her and, thereafter, removed her ear rings, nose pin and OM from her neck which were made of gold. The co-accused of the appellant had caught hold of her hand whereafter the appellant gave axe blow on her neck and head. She went on to state that when the appellant had reached the spot he had firstly asked her as to why she was cutting the wood. She proved the statement Ex.PD which he had made before the police on the basis of which the FIR was registered.

PW7 ASI Jai Bhagwan deposed about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the appellant claimed to be innocent and falsely implicated in the case. Nothing was recovered from his possession On 7.5.2004 he was away in a marriage party at village Ludana, District Jind and was not present at Matlaudha. The criminal case was registered due to party faction and political pressure.

In defence the appellant examined DW1 Ramesh who testified that the marriage of his elder brother Krishan was solemnized on 5.5.2004 and 6.5.2004 at village Ludana. The appellant, who was not related to him, owned a Maruti car. However, his nephew Bintu was a friend of the appellant. Bintu was resident of Matlaudha. Bintu had arranged the car from the appellant for attending the marriage. The appellant had come to

village Ludana on 5.5.2004 and left Ludana on 7.5.2004 at about 4.00 p.m.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the learned trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

This Court has heard Mr. Harkesh Manuja, Advocate for the appellant and Mr. Kapil Aggarwal, Additional Advocate General, Haryana besides scanning the evidence with their able assistance.

Though according to the prosecution, the appellant and his co-accused had committed the offence of robbery by removing the gold ornaments of the complainant and, that too, while attempting to cause grievous hurt to the complainant yet the gold ornaments in question could not be recovered by the investigating agency. Both the accused were said to have suffered disclosure statements that they had sold the gold ornaments which they had removed from the person of the complainant, to a jeweler of Haridwar for Rs.2,200/- and, thereafter, distributed the said amount between themselves and spent the same. Subsequently, another disclosure statement was made by both the accused that they had sold the gold ornaments to a jeweler of Delhi and not to a jeweler of Haridwar. However, no such jeweler either from Haridwar or from Delhi was associated in the investigation of the case which could establish that the appellant and his co-accused Santosh had forcibly removed the gold ornaments from the

complainant and, thereafter, shared the proceeds by selling the same to some jeweler. Under these circumstances, it is difficult to uphold the conviction and sentence of the appellant for committing the offence under Section 392 read with Section 397 IPC. At the most, the prosecution case can be accepted to the extent of the appellant voluntarily causing grievous hurt to the complainant making him liable for committing the offence punishable under Section 325 IPC. Out of the five injuries found on the person of the complainant, injuries No.1 and 2 which were lacerated in nature and on the left lateral aspect of the head and left side of forehead of the complainant were found to be grievous in nature, whereas, the remaining three injuries, which though were incised in nature, were simple in nature.

The defence version of the appellant is nothing but created by him so as to escape from the rigors of law. One Bintu, at whose instance the appellant had left for village Ludana of DW1 Ramesh for attending the marriage function, was not examined by the defence. Further, though according to DW1 Ramesh, the appellant had left Ludana on 7.5.2004 at about 4.00 p.m. yet during his cross-examination he deposed that the marriage procession had left Ludana for village Kharak Kalanga, District Bhiwani in the evening of 6.5.2004 whereas he himself had left Kharak Kalanga on 7.5.2004 at about 6.00/7.00 a.m. There is, thus, no convincing evidence on the record from which it could be said that the appellant had remained with the marriage procession upto 4.00 p.m. on 7.5.2004.

The age of the appellant, at the time of framing of the charges was recorded as 19 years. He had remained in custody during the trial of the case which culminated on 8.7.2005. Subsequently, his sentence of imprisonment was suspended during the pendency of the appeal and as is clear from the custody certificate, he has already undergone an actual period of 2 years, 3 months and 15 days. It has been pleaded on his behalf that he is not a previous convict and there is none, except him, who can look after his old parents. Taking into consideration the totality of the circumstances, this Court is of the view that the appellant can be sentenced to the period already undergone by him, i.e. 2 years, 3 months and 15 days for committing the offence under Section 325 IPC.

Resultantly, the conviction and sentence of the appellant for the offences under Section 392 read with Section 397 IPC is set aside. Instead, he is convicted under Section 325 IPC and sentenced to the period already undergone by him, i.e. 2 years, 3 months and 15 days.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

May 31, 2017
satish

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO