

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

**CRA-D-266-DB of 2014
Decided on : 6.3.2017**

Kharkanna @ Soni and ors.

....Appellants

Versus

State of Punjab

....Respondent

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

Present : Ms.Gurjeet Kaur, Advocate
for appellants - Kharkanna @ Soni and Surjit Singh @
Katti.

Mr.Saurabh Arora, Advocate
as legal aid counsel for appellant – Mittar @ Mitri.

Mr.S.S. Dhaliwal, Additional A.G., Punjab.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 21.12.2013 passed by the Court of learned Additional Sessions Judge, Ludhiana, vide which accused Kharkanna @ Soni, Surjit @ Katti and Mittar @ Mitri stand convicted and order dated 23.12.2013 vide which such convicts sentenced as far as offence under Section 459 IPC to undergo rigorous imprisonment for five years and to pay a fine of ₹2,000/- each, in default thereof, to further undergo rigorous imprisonment for six months and for offence under Section 460 IPC to undergo rigorous imprisonment for life and to pay a fine of ₹5,000/- each, in default thereof, to further undergo rigorous imprisonment for

one year and for offence under Section 395 IPC to undergo rigorous imprisonment for seven years and to pay a fine of ₹5,000/- each, in default thereof, to further undergo rigorous imprisonment for one year.

All the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it unfolded during the trial is that on 26.9.2003, on receipt of information that on 25.9.2003 at about 1:00 A.M., a robbery had taken place in the farm-house of Tarlochan Singh in which Tarlochan Singh and his family members had suffered injuries, a police party from Police Station Sadar, Ludhiana led by ASI Sangram Vir (hereinafter referred to as Investigating Officer/IO) went to the spot. The police party came across complainant – Manveer Kaur in the courtyard of the said house, who got her statement Ex.PA recorded with the Investigating Officer in which she stated that her family which include her father Tarlochan Singh, mother Gurpreet Kaur, grandfather Mohinder Singh, grandmother Nasib Kaur, she herself, her younger sister Hardip Kaur and two younger brothers namely Gagandeep Singh and Gurkirat Singh had been residing in the farm-house. On 25.9.2003 at about 9:30 p.m., the family had gone to sleep. Mohinder Singh along with Gagandeep Singh slept outside varandah. At about 1:00 A.M., after midnight Mohinder Singh raised cry for help, hearing that his son Tarlochan Singh came out and he observed that

Mohinder Singh was being beaten up by 5-6 intruders. Those intruders caught hold of Tarlochan Singh and caused him injuries. As a matter of fact, they had taken Mohinder Singh and his son Tarlochan Singh inside the house. Two persons gave beatings to Mohinder Singh besides causing injuries to Gurpreet Kaur. Those intruders had bolted Hardip Kaur, Gagandeep Singh and Gurpreet Kaur inside the bathroom. Such intruders were armed with iron rods and were in the age group of 28/30 years and were speaking in Hindi. They seemed to be *bhaiya* type (natives of U.P./Bihar). None of them was wearing turban. Those culprits after causing injuries to Tarlochan Singh, Mohinder Singh and other family members took all the jewellery and cash lying at home.

In her statement, Manveer Kaur stated that at about 5:00 A.M. in the morning, she came out of the bathroom and informed her uncle Harbhajan Singh regarding the incident. Harbhajan Singh along with his sons Harminder Singh and Laddi came there and removed injured Mohinder Singh, Tarlochan Singh, Nasib Kaur, Gurpreet Kaur and Gagandeep Singh to the Dayananad Medical College and Hospital, Ludhiana. The complainant had stated that such criminals had caused injuries to her family members with an intention to kill them and she could identify them if brought before her. From the contents of her statement, the Investigating Officer was of the view that offence under Section 459 IPC was disclosed and as such he appended his endorsement Ex.PB below the ruqa and sent the same to Police Station Sadar, Ludhiana on the basis of which formal FIR Ex.PC was recorded. He summoned fingerprint expert and dog squad to the spot. Inspector

Jaswinder Singh, SHO, Police Station Sadar, Ludhiana who had also reached the spot took over the investigation. During the course of investigation, the Investigating Officer prepared rough site-plan of the place of incident and recorded statements of witnesses. Since on 26.9.2003, Tarlochan Singh had succumbed to the injuries suffered by him in the incident, as such offences under Sections 395/302 IPC were added. Necessary inquest proceedings were carried out and post-mortem examination was got conducted on the dead body. The assailants/intruders had left a black bag at the spot. The complainant produced the same before Inspector Jaswinder Singh. That bag was found to contain pass-book of Oriental Bank of Commerce in the name of Santosh son of Sham Lal besides a ration card in his (Sham Lal) name and two other receipts. Such articles were taken into possession by the Investigating Officer vide a memo. The police tried its best to arrest accused Ranjit, Maghar, Sher Singh, Babu, Ravi, Mukesh, Ranvir, Daya Ram, Mohinder etc. but they could not be apprehended, as such they were declared proclaimed offenders on 10.6.2004 and challan against 10 of the accused namely Ranjit Singh, Maghar, Sher Singh, Babu, Ravi, Mukesh, Raghvir Singh, Daya Ram and Mohinder etc. was filed in the Court of Area Magistrate, Ludhiana.

However, accused Kharkanna @ Soni, Surjit @ Katti, Sana and Mittar @ Mitri were arrested by CIA Staff, Ludhiana in FIR No.47 dated 16.2.2005 for the offences under Sections 399/402 IPC, Police Station Basti Jodhewal, Ludhiana on 16.2.2005. Such accused during the course of interrogation on 17.2.2005 admitted having committed the

present incident with help of Ranjit Singh and others, taking away costly items which had later on been distributed by them amongst themselves. Such accused were identified by complainant - Manveer Kaur and Gurpreet Kaur in the Court. ASI Sukhbir Singh recorded statement in that regard on 10.3.2005. Since later on accused Kharkanna @ Soni, Surjit @ Katti, Sana and Mittar @ Mitri had been arrested in the case in hand, as such supplementary challan against them was filed in the Court.

On presentation of challan in the Court of Magistrate, Ludhiana, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offences for which the challan had been filed were exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Ludhiana vide order dated 2.5.2007 committed the case to the Court of learned Sessions Judge, Ludhiana, from where it was entrusted to the Court of learned Additional Sessions Judge, Ludhiana.

Learned trial Court finding that prima-facie offences under Sections 459/460/395 of the Indian Penal Code were disclosed against the accused, formal charge for such offences against accused Kharkanna @ Soni, Surjit @ Katti, Sana and Mittar @ Mitri was framed, to which, they pleaded not guilty and claimed trial. However, during the trial proceedings accused Sana absented himself. Since he could not be arrested despite issuance of warrants of arrest and publication of proclamation under Section 82 Cr.P.C. against him, he was declared a proclaimed offender.

During the course of its evidence, the prosecution examined

as many as eight witnesses as detailed below:-

PW1	-	SI Sangram Vir
PW2	-	ASI Harbhajan Singh
PW3	-	Gurpreet Kaur
PW4	-	Manveer Kaur
PW4(again)-		HC Satpal Singh
PW5	-	ASI Sukhbir Singh
PW7	-	Inspector Devinder Kumar
PW8	-	Inspector Jangjeet Singh

Since the prosecution failed to conclude its evidence despite availing of several opportunities, the trial Court closed its evidence by order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts, learned Additional Advocate General for the State of Punjab besides going through the record and we are of the view that the impugned judgment of conviction and sentence is not sustainable and is liable to be set aside by way of acceptance of the appeal for the reasons

detailed below:

Firstly, none of the accused is named in the FIR. Though it is mentioned that the intruders/assailants were in the age group of 28/30 years and seemed to be natives of U.P./Bihar and they did not wear any turban but then the salient features of such persons have not been given. Numerous persons from the region or around may conform to such particulars. It has to be taken into view that test identification parade was not arranged by the Investigating Officer so as to get the accused identified from the eye-witnesses. The identification of accused by the eye-witnesses in the Court is for the first time which is not sufficient to establish their identity. It has to be kept in mind that the incident as per prosecution story had taken place on 26.9.2003 whereas statements of witnesses i.e. Manveer Kaur – complainant and Gurpreet Kaur were recorded in the Court on 25.5.2011 and 15.3.2011, respectively, after more than seven years of the incident. Though both of them had identified the accused to be the criminals who had trespassed into their house and committed robbery but then the same seems to be difficult to believe keeping in view the fact that the accused persons were being identified after passage of such a long time. During her cross-examination, PW3 – Gurpreet Kaur stated that immediately when the criminals had entered their house, she had seen 3-4 persons but 3-4 persons surrounded her but then they make her smell some poisonous substance as a result of which, she became unconscious. PW3 – Gurpreet Kaur stated in her cross-examination that the occurrence lasted for about five hours. She having become unconscious after a few

minutes of her noticing intruders in the house, she could not possibly have seen the entire occurrence. PW4 Manveer Kaur – complainant stated that she herself had witnessed the occurrence when the accused caused injuries to her mother but she did not see the occurrence as relates to the injuries to her grand-parents. She had volunteered to state that she had heard their noises. While answering a question, she replied that she herself, her mother, her brother and her sister were shut in the bathroom. Therefore, the version given by them in their examination-in-chief cannot be taken to be a full and complete eye witness account of the occurrence, so depositions of these witnesses do not clearly establish the participation of the present accused in the incident.

Secondly, no recovery has been effected from any of the accused-convicts. It is not case of the prosecution that any stolen article taken away by the criminals during the robbery had been recovered from any of the accused-convicts. For that matter no weapon said to have been used in the incident was recovered from any one of them.

Thirdly, the accused – convicts are stated to have been arrested in case registered vide FIR No.47 dated 16.2.2005 for offences under Sections 399/402 IPC, Police Station Basti Jodhewal, Ludhiana by CIA Staff on 16.2.2005 and during their interrogation on 17.2.2005, they had allegedly admitted having participated in the present incident along with other accomplices but then the Investigating Officer who is said to have interrogated such accused in FIR No.47 dated 16.2.2005 was not examined as a prosecution witness in this case. In any case, the statement made by the accused in custody to a police officer is clearly

hit by Section 25 of the Indian Evidence Act and is inadmissible in evidence.

Fourthly, no medical evidence is there on the record to show that Mohinder Singh and Tarlochan Singh had died unnatural death and Nasib Kaur and Gurpreet Kaur had suffered injuries on their person. The doctors who had conducted post-mortem examination have not been examined and so were the doctors who had medico-legally examined injured Gurpreet Kaur and Nasib Kaur. Even if such doctors were not available for any reason like migrated abroad or untraceable, the prosecution could have led secondary evidence by getting permission from the trial Court and could very well have got the post-mortem reports of the deceased and medico legal reports of the injured proved from the doctors/medical officials acquainted with handwriting of the doctors who had actually prepared such reports but no step was taken by the prosecution in that respect.

Under the circumstances, the prosecution has failed in its endeavour to prove its charge against the accused beyond a shadow of reasonable doubt that on the intervening night of 25/26.9.2003 in the area of Rajowal, the accused armed with deadly weapons had committed lurking house trespass/house breaking of residential house of Mohinder Singh used for the purpose of human dwelling and caused grievous hurt to Mohinder Singh, Tarlochan Singh, Nasib Kaur and Gurpreet Kaur and that Mohinder Singh and Tarlochan Singh had succumbed to such injuries and further the accused – convicts along with their accomplices had committed dacoity in the said house. The trial Court by misappraisal

of evidence and wrong interpretation of law erroneously came to the conclusion that the charge framed against the accused – convicts stood proved.

Therefore, appeal is found to have merit and the same is accepted. The impugned judgment of conviction and order of sentence is hereby set aside by way of acceptance of appeal. Resultantly, accused – convicts are ordered to be acquitted of the charges framed against them.

6.3.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No