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

1. CRA-S-4255-SB-2015
Date of Decision : August 29, 2017

Pardeep Kumar Appellant

Versus

State of Haryana Respondent

2. CRA-S-4853-SB-2015

Ram Niwas Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Ms. Tanu Bedi, Advocate,
for the appellant in CRA-S-4255-SB-2015.

Mr. I.S.Pabla, Advocate,
for the appellant in CRA-S-4853-SB-2015

Mr. Munish Dev Sharma, A.A.G., Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present two appeals are directed against the common judgment of

conviction dated 25.08.2015 and order of sentence dated 26.08.2015 passed by learned Additional Sessions Judge, Gurgaon, whereby the appellants were convicted and sentenced as under:-

Under Section	Sentence	In default
U/s 394 read with Section 397 IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.10,000/- each	to further undergo Simple Imprisonment for a period of One year each.

Both the sentences were ordered to run concurrent.

2. Therefore, both these appeals are being decided by this common judgment.

3. Facts relevant for the purpose of decision of the appeals; that on 11.11.2014, Nakul Dass, complainant, (PW-1) was coming from Faridabad to Rohtak on truck bearing registration No.HR-39A-3155 and when he reached near Wazirpur turning point, Gurgaon at about 2.00 O'clock mid-night, two persons came on motorcycle bearing registration No.DL-9S-1051, make Pulsar and parked their motorcycle in front of his truck. Later on, they entered the cabin of the driver and pulled him from the truck. One of them gave knife blow on the neck and cheeks of the complainant and as he tried to save himself, he suffered injuries on his hand as well. Thereafter, they took him in the vehicle and threw him near village Harsaru Bypass. At that time, they snatched his mobile and currency notes worth Rs.2,000/-. Nakul Dass, PW-1 informed about the incident to the owner of truck, Om Parkash (PW-2) and they then reported the matter to the police. On the basis

of statement (Ex. PA) of the complainant, FIR Ex. PB was registered on 11.11.20104.

4. During the process of investigation, accused persons were arrested. Recovery of truck, motorcycle, mobile phone as well as currency notes was effected and after completion of investigation, challan was presented in the Court.

5. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence punishable under Sections 394 read with Section 397 and sentenced them.

6. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeals.

7. Ms. Tanu Bedi and Shri I.S. Pabla, learned counsel for the appellants contended that the prosecution case is totally false and there was no material or evidence available on the file against the present appellants, still the Court below recorded the judgment of conviction.

8. Learned counsel for the appellants further submitted that there is serious dispute about the identification of the accused persons. The first version available with the police is the statement (Ex.PA) made by Nakul Dass before the Police is quite different from the deposition of Nakul Dass,

PW-1, made before the Court and the trial Judge has misread the entire evidence which is not even available on the record.

9. Learned counsel for the appellants also contended that admittedly, there was no Test Identification Parade and the identity of the accused-appellants was itself in dispute and hence, the judgment of conviction and order of sentence recorded against the appellants deserve to be set-aside. In support of this argument, reliance has been placed upon the judgments from Hon`ble Supreme Court in **State of Maharashtra through CBI Vs. Sukhdev Singh alias Sukha and others**, (1992) 3 SCC 4 and **Dana Yadav alias Dahu and others Vs. State of Bihar** (2002) 7 SCC 295.

10. While arguing on the point of recoveries effected in this case and their evidentiary value, learned counsel for the appellants submitted that there were material discrepancies in the statements of witnesses and no independent witness was joined and as such, the same cannot be made the basis to convict the appellants. On this point, reliance was placed upon the judgment from Hon`ble Supreme Court in **Dhan Raj alias Dhand Vs. State of Haryana** (2014) 6 SCC 745.

11. Learned counsel for the appellants also contended that the conviction has been recorded by learned trial Judge on the basis of solitary statement of Nakul Dass, PW-1 and that is not believable at all and therefore, the appellants are entitled to acquittal in this case. On this point, reliance has been placed upon the judgment from Hon`ble Apex Court in

Lallu Manjhi and another Vs. State of Jharkhand, (2003) 2 SCC 401.

12. While arguing on these points, learned State counsel submitted that learned trial Judge has rightly recorded the judgment of conviction as there was no dispute about the identity of the accused-persons. The complainant had seen the accused-persons at the time of incident and subsequently at the time of trial. Recoveries have been duly effected in the presence of the witnesses and there is nothing to disbelieve their testimony. There is no ground to disbelieve the solitary witness as the facts and circumstances establish that he is the victim of the case and at the time of occurrence, there was no other eye-witness available as the occurrence had taken place at 2.00 O'clock midnight and there is no reason to disbelieve his testimony as he has well-stood by the test of cross-examination. There is no ground for acceptance of the present appeals and learned trial Judge has already considered all the aspects while record judgment of conviction and order of sentence. The appeals are liable be dismissed.

13. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that for holding the accused-appellants guilty, the Court is to see whether they were actually involved in the commission of offence and they were identified by the complainant or any other witness at the time of commission of offence and subsequently at the trial stage. Admittedly, no Test Identification Parade was carried out. No doubt, Test Identification Parade is only supplementary evidence and if the identity of the accused persons is

otherwise established on the basis of statements of eye-witnesses/victim, then the conviction still to be recorded without holding Test Identification Parade. However, in the present case, the facts of the case and evidence available on the file are much relevant. The first version available with the police on the basis of which investigation was set into motion is Ex. PA, i.e., statement of Nakul Dass, complainant. As per his statement, Ex. PA when Nakul Dass reached Wazirpur turning point at about 2.00 O'clock in the mid-night on truck bearing No. HR-39A-3155, two persons parked their motor-cycle bearing registration No. DL-9S-1051, make Pulsar, in front of the truck and got stopped his vehicle and thereafter entered the cabin and caused injuries to him. At that time, the complainant had given the description of the two accused, that one of them was tall and the other was of short height. The short height person told Ram Niwas to give knife blow to Nakul Dass and he gave knife blow on his neck and left cheeks. As he made an attempt to save himself but suffered injuries on his hand with knife. Thereafter, they took him in the vehicle and threw him near village Hasaru Bypass. At that time, they took away a mobile and currency notes worth Rs.2,000/-. Thereafter, he reported the matter to the police on the basis of which FIR was recorded. His next version is by way of statement before the Court as PW-1. When he appeared as PW-1 in the Court, he had narrated a totally different story. As per Nakul Dass, when he reached near Wazirpur turning point, his truck got punctured there and he stopped the vehicle for changing the tyre. At that time, two young persons came on a motorcycle

and stopped the same on the left side of the road and both the young persons boarded the truck from conductor and driver seats. In the first version, the statement was totally different and he had stated that he was going on the truck and two accused persons parked their motorcycle in front of his truck and then he stopped the truck and as per his statement before the Court as PW-1, his truck got punctured and the truck was also stopped by the two young persons. He has failed to explain this improvement though, a question was put to him and he was confronted on this point in the cross-examination. In the subsequent part of his deposition as PW-1, he submitted that Ram Niwas inflicted him knife blow on his neck and left side of the temple and on left thumb after covering him with the blanket which was lying in his truck for his personal use and his throat was strangled by the accused persons with the help of lead. Again, this is quite contrary to his first version (Ex. PA). PW-1 was confronted on this part of his statement and he had no explanation to be furnished. The complainant continued to make different versions that thereafter, both the accused put him on the ground and after digging pitch on the earth, they pressed his neck in the pitch and put the foot on back side of his neck and pressed his neck in the pitch. The accused persons presumed that the complainant had died and they put him on the road side deep pitch and took away currency notes and his mobile. This was improvement and addition to his earlier statement, Ex. PA to which he was rightly confronted by learned defence counsel at the time of trial, but he had no reason to explain.

15. The witness disclosed strange facts in his cross-examination when he came with the explanation that the name of Ram Niwas accused was disclosed to him in the Police Station by the police. The other material fact which is contrary to record disclosed by him while appearing a PW-1 is that truck was found on the same day and was parked in the Police Station, whereas the prosecution case is otherwise.

16. In his entire statement as PW-1, the witness failed to identify the accused persons facing trial. If the statement of complainant – Nakul Dass as PW-1 alone is taken into consideration, he has not been able to identify the accused persons facing the trial either in his statement Ex. PA or subsequently at the trial stage. Undisputed, there is no Test Identification Parade in this case. One fails to understand as to on what basis, learned trial Judge came to the conclusion that the witness had identified the accused persons. In Ex. PA, only name of Ram Niwas had come and the witness had given the explanation that even the name was disclosed to him by the Police in the Police Station. That way, there is absolutely no evidence regarding identity of the accused persons and there was no material or evidence available on the file to record the judgment of conviction against the present appellants so as to connect them with the alleged crime. Undisputedly, Nakul Dass, complainant is the solitary witness of this case, who was in a position to explain.

17. The other material witness is PW-2, Om Parkash, who is the owner of the truck in question and he has not seen the occurrence, rather, he

was informed by Nakul Dass and then he accompanied the complainant to police Station of Sector 10, Gurgaon for reporting the matter to the police. On these basis, there was no reason or material before the Court below to record the judgment of conviction. Even Om Parkash has specifically deposed in his cross-examination as PW-2 that he was not in a position to identify the accused persons present in the Court nor any recovery was effected from the accused in his presence. So, his statement is not of any help so as to hold the present appellants guilty for commission of alleged offence.

18. With regard to recovery, undisputedly, no independent witness was joined at the time of alleged recovery. There are material contradictions in the statement of prosecution witnesses regarding alleged recovery also. As per PW-1, the truck was found parked in the Police Station on 10.11.2014 itself, whereas PW-7, Satparkash Khanna, who is witness to the recovery deposed that the truck was traced out by the police later on and the same was recovered on 13.11.2014. PW-9, Jagdish Rai, Addl.SHO and PW-10 Const. Parveen Kumar also deposed that the truck was recovered on 13.11.2014. Recovery of knife, motorcycle, mobile, currency notes as well as truck in question was not effected in the presence of any independent witness, although, there was availability of the same and there are contradictions regarding recovery and the Court below has completely ignored these facts while recording the judgment of conviction and passing order of sentence.

19. In view of the foregoing discussion, the appeals are accepted. The impugned judgment of conviction and order of sentence passed by learned trial Judge are set-aside and the accused-appellants are acquitted of the charge.

(SHEKHER DHAWAN)
JUDGE

August 29, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes