

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No.S-5363-SB of 2015 (O&M)

Date of Decision: 02.12.2017

Bharat Saud and others

.....Appellants

Versus

The State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Maninderjit Singh Bedi, Legal Aid Counsel
for the appellants.

Ms. Anju Sharma Kaushik, AAG Punjab.

AVNEESH JHINGAN, J.

The present appeal has been filed by the appellants against the State of Punjab, challenging the judgment of conviction and order of sentence dated 03.10.2015 passed by learned Additional Sessions Judge, Ludhiana, whereby they were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/- each and in default of payment of fine, to undergo further rigorous imprisonment for six months under Section 394 of the Indian Penal Code.

The brief facts of the prosecution case, as noted down in the judgment passed by learned Additional Sessions Judge, Ludhiana, are as under:

"2. Briefly put, the case of the prosecution is that on 11.4.2014, S.I. Rajinder Kumar alongwith other police officials were on patrolling duty and were present at Aarti chowk where Aarti Sharma wife of Ashok Kumar alongwith his son Ashutosh accompanied by Dharampal

met the police party. She suffered the statement before the police that her husband is architect who had gone to Paris. On 10.4.2014 she and her son Ashutosh and their servant Hari Bahadur were present at the house. It was 8:30 PM that she was preparing meals in the kitchen at second floor and her servant was cleaning the utensils in the kitchen while her son was watching television in the Bedroom that suddenly two boys came in the kitchen. One of those boys put his hand on her mouth and the other boy tied her with the wires. Hari Bahadur her servant tied her mouth with "Chuni" and threw her on the ground and starting giving blows at her head. She became unconscious. When she gained consciousness, all three boys were beating her son. She untied her legs and arms and came in the balcony and raised hue and cry that all these three persons ran away from the spot. She checked and found that three gold rings worn by her were not available. The locks of the drawers of the almirah in the room were found broken. Dharampal and other persons of the locality took her and her son to the Civil Hospital. The said statement was signed by her in token of its correctness. It was endorsed by the Investigating Officer at about 11:45 PM and sent the same for registration of the case. The FIR was thus registered at 12-15/12-55 AM vide Rapat No. 25 and 26 dated 11.4.2014.

3. The Investigating Officer reached at the spot and prepared the site plan. The dupatta was taken into police possession alongwith the electricity wires. In order to arrest the accused persons, the naka was laid at Aarti Chowk. The accused were arrested who were identified by Aarti Sharma and her son Ashutosh. On inquiry, one of the accused disclosed his name as Maha Saundh @ Hari Bahdur son of Ratti Saundh. The other persons disclosed his name as Bharat Saundh son of Hari Saundh.

The third person disclosed his name as Raman Saundh son of Hari Saundh. On personal search of Maha Saundh, three gold rings were recovered from the pocket of his trouser which were taken into police possession after converting the same into parcel which were sealed with the seal bearing impressions of "RK". On search of Bharat Saundh, a screw driver was recovered from his bag and a wrench was also recovered. With those articles, the complainant and her son were beaten. The same were also taken into police possession and were converted into parcel and were sealed with the seal bearing impressions "RK". The accused were identified by Aarti Sharma and Ashutosh and identification memo was prepared. The accused Raman Saundh son of Hari Saundh was also arrested. All the accused were joined in investigation. On 12.4.2014, Aarti Sharma recorded the supplementary statement that one of the boys who came with their servant, was having screw driver in his hand and the other was having wrench and these articles recovered are the same with which they threatened them and committed the robbery. The CCTV footage of 10.4.2014 regarding the occurrence and the photographs of the accused were handed over by son of the complainant namely Ashutosh on 13.4.2014 to the police. The offence under Sections 392 and 397 IPC were added. On 22.4.2014 Aarti Sharma alongwith her husband Ashok Kumar came to the police post and produced the bills issued by Chopra Sons Jeweller, Bill No.R-1 2054 which was taken into police possession. On completion of necessary investigation and all other formalities, challan against the accused was presented in the Court.

4. Finding a prima face case against the accused, charge for the offence punishable under Sections 392, 394 and 397 of the IPC was framed against the accused. The accused pleaded not guilty and claimed trial."

The prosecution, in order to prove its case, examined Aarti Sharma, Ashutosh Sharma, ASI Rajinder Kumar, C. Mool Raj and Dr. Harish Kirpal as PW1 to PW5 respectively.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and their false implication in the present case. However, the accused-appellant did not lead any defence evidence

The learned Trial Court after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Learned State counsel has placed on record custody certificates of the appellants Bharat Saud, Maha Saud @ Hari Bahadur and Raman Saud, vide affidavits of Rahul Raja officiating Superintendent Borstal Prison, Ludhiana, dated 2.12.2017, 1.12.2017 and 2.12.2017 respectively which are taken on record and perused.

At the time of hearing, learned legal aid counsel appearing for the appellants challenged the conviction on the ground that prosecution failed to prove offence against the appellant. In the alternative, he prayed for reduction of sentence stating that they were first offenders and no grievous injuries have been proved. He further argued that the appellants are of young age and were migrant to Punjab. He also relied upon the custody certificates to state that there is no involvement of the appellants in any other criminal case.

On the other hand, learned counsel for the State argued that the case of the prosecution has been duly proved. There is nothing on the record to show false implication of the accused in the present case. She further

states that accused had admitted that they were present in the house at the time of committing of offence. She argued that there is no merit in the present appeal and the same should be dismissed.

I have heard learned counsel for the parties and gone through the record.

The prosecution case was supported by the deposition of Aarti Sharma, who appeared as PW1. She narrated the prosecution case. She further deposed that Hari Bahadur wrapped her *dupatta* on her mouth and rolled it on her face. Two other persons caught her. They gave fist blows on her head and she became unconscious. She had stated that her three finger rings were stolen and her house was ransacked. She identified the finger rings which were recovered during the investigation from Hari Bahadur. She identified Maha Saundh before the police. Hari Bahadur was servant in her house and to whom specific role was attributed by her. CCTV camera was installed in the house. CCTV footage was produced as Ex.P5 which also showed presence of the accused in the house.

Ashutosh Sharma son of Aarti Sharma deposed as PW2. He stated that when he woke up, he saw that their servant Hari Bahadur along with two other assailants armed with screw driver and wrench were giving beatings to him.

Rajinder Kumar ASI appeared as PW3 and deposed regarding investigation. He deposed that on secret information, he had nabbed all the three accused from Aarti Chowk. During investigation, all the three accused disclosed their names as Maha Soud, Bharat Soud and Raman Soud. Three ladies rings were recovered from Maha Soud. One screw driver and one wrench were recovered from bag of Bharat Soud.

The injuries were proved by medical report Ex.PW5/D. Dr. Harish Kirpal who appeared as PW5, filed affidavit mentioning the injuries suffered by Aarti Sharma and Ashutosh.

The said evidence duly proved the offence committed by the appellants under Section 394 IPC. The learned trial Court, after proper appreciation of the facts and the evidence, had held that the case against the accused was not made out under Section 397 of IPC and they were acquitted of the said offence.

In the present case, ingredients of Section 394 IPC are fulfilled i.e. hurt caused in committing robbery. The prosecution has proved the injuries caused to Aarti Sharma and Ashutosh Sharma. The rings etc robbed were also recovered from the appellants.

In view of the evidence, it is proved that the prosecution successfully by leading cogent evidence proved beyond reasonable doubt the offence committed by the accused, therefore, the judgment of conviction dated 3.10.2015 passed by learned Additional Sessions Judge, Ludhiana, is correct and as per law and it does not require any interference.

With regard to sentence, this court in *Mahabir Vs. State of Haryana*, 1997 (3) RCR 649, keeping in view the delay in trial, reduced the sentence to the period already undergone.

Even, the Hon'ble Apex Court in *Mukesh Vs. State of M.P.*, 2014 (16) SCC 571 had reduced the sentence to already undergone. The facts of that case indicate that recovery of the contraband was effected from the appellant about 15 years ago. Thus, the appellant had already suffered the agony of protracted trial, spanning over a period of one and half decade.

imprisonment out of five years. He was on bail since 2005, no other offence committed by him had been brought on record.

However, keeping in view the fact that the appellants are the only male earning members of their respective families; they are of young age; it was their first offence; they have already suffered long protracted criminal proceedings since 2014, and appellant-Bharat Saud son of Hari Saud has undergone one year, eleven months and twenty four days of actual sentence(remission 25 days) appellant-Maha Saud @ Hari Bahadur son of Ratti Saud has undergone two years, six months and three days of actual sentence (remission four months and fourteen days) and appellant Raman Saud son of Hari Saud has undergone two years, one month and fourteen days of actual sentence (remission one month and five days), the sentence imposed upon them is liable to be reduced to the period already undergone by them. However, the sentence of fine and in default thereof shall remain the same.

Accordingly, the present appeal is partly allowed and the sentence imposed on the appellants is reduced to the period already undergone by them. If the fine has not been deposited, same be deposited within a period of three months with Chief Judicial Magistrate/Duty Magistrate Ludhiana, from the date of receipt of certified copy of this order. On their depositing the fine, their bail bonds shall be released.

2.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No