

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

**Criminal Appeal S-1607-SB of 2004
Date of Decision: January 17, 2018**

Sandeep and others		Appellants
	Versus	
State of Haryana		 Respondent

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

Present : Mr. Sudhir Sharma, Advocate
for the appellants.

Mr. Pramjeet Singh, Assistant A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellants, namely, Sandeep, Deepak, Manjit, Narinder and Ramesh alongwith Amit Yadav @ Mitu were tried for committing offences punishable under Sections 395, 397 and 412 IPC. Vide judgment and order dated 31.7.2004, learned Additional Sessions Judge, Rohtak, acquitted Amit Yadav @ Mitu of the charges against him. The appellants were convicted under Section 412 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years. They were also convicted

under Section 395 read with Section 397 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years. Both the sentences were ordered to run concurrently. 90% of the fine amount imposed upon them, was ordered to be paid to PWs Gajja Nand and Girish Singla to be shared by them equally.

According to the prosecution, on 10.5.2003, ASI Ram Kishan, Incharge, Police Post, Shivaji Colony, Rohtak alongwith Constable Rakesh Kumar and Constable Siri Bhagwan was present at Jhajjar Chowk in connection with patrolling, where he received a telephonic message from Dharambir, Municipal Councilor to the effect that Gajja Nand and his son Girish Singla while they were going to their house after closing their shop were attacked by some boys, who caused injuries to them and also snatched the cash and bags of ornaments from them. Thereafter, ASI Ram Kishan received message from P.G.I.M.S., Rohtak, regarding admission of Gajja Nand and Girish Singla. Accordingly, he alongwith his fellow officials reached Police Post, P.G.I.M.S., Rohtak and collected ruqa and medico-legal reports in respect of Girish Singla and Gajja Nand. ASI Ram Kishan sought opinion from the doctor regarding fitness of the two injured to make statement but they were declared unfit. Subsequent thereto, ASI

Ram Kishan alongwith other police officials again went to Ward No.6 of P.G.I.M.S., Rohtak and sought opinion of the doctor. Accordingly, Girish Singla son of Gajja Nand, who was declared fit got recorded his statement, which is as follows:-

“Statement of Girish Singla son of Sh. Gajja Nand resident of Aggarsain Colony, H. No. 217/35, Naya Parao Mohalla, Rohtak, aged about 25 years.

I am resident of above mentioned address. I run a gold-smith shop in the name of Bhalotia Gajja Nand and Sons in the street known as “Sunaron Wali Gali” situated at Railway road. Yesterday, on 10.5.2003 at about 8.45 p.m. (night) I and my father started for going to our house after closing our shop having a bag containing a sum of Rs.4 lacs, Silia silver & golden Gal Patian on Kinetic Honda scooter. When we reached in “Pipal Wali street” near Khatu Sham Mandir, a tall young man came in front of our scooter suddenly. He tried to throw red pepper in the eyes of my father. My father stopped the scooter. In the meantime, four other young boys, out of them, three were of middle height and fourth was tall armed with knife, iron-rod and small kirpan came there. They surrounded us. They wanted to snatch (double chained) black bag on which sticker of the shop was fitted, having aforesaid articles. I and my father objected to it. The tall person/boy, who tried to stop our scooter caught hold of my father in his grip. Other boy, who had iron rod in his hand gave injuries on the head of my father. Other boy, who was armed with

knife gave its blow on right side of my chest. The boy, who had kirpan gave blow on my right thigh. The boy armed with iron rod gave blow on my head and he snatched my bag. I and my father raised noise, "Bachao, Bachao." Listening our noise, Raj Kumar, priest of the temple and Gopal Dass son of Sat Narain Verma came there. Seeing them coming, three boys fled away on a motor-cycle standing in the street and the others ran away on foot towards Jhajjar Octroi, with their respective weapons. Gopal Dass Verma carried us to Medical College, Rohtak for treatment in Ambulance of Manav Sewa Sangh and got us admitted there. We can identify all the five persons/boys who snatched our cash and ornaments etc. if produced before us. I got recorded my statement to you. Heard it, which is correct".

Sd/-

Ram Kishan
ASI/Incharge, Police Post, Shivaji Colony, Rohtak
11.5.2003.

It is also the case of the prosecution that as the statement of Girish Singla revealed commission of cognizable offence, ASI Ram Kishan after preparing a ruqa, sent the same to Police Station City, Rohtak, on the basis of which, FIR No. 287 dated 11.5.2003 under Sections 395 and 397 IPC was registered at 12.50 p.m.

It is further the case of the prosecution that Dr. Arun

Joshi had medico-legally examined complainant Girish Singla and found the following injuries on his person:-

- “(i) A lacerated wound 8 x 1.5 cm x bone deep on right forehead with fresh bleeding. Surgeon opinion was advised.
- (ii) Lacerated wound of size 3 x 0.5 x bone deep on right temporo parietal region with fresh bleeding. Surgeon opinion was sought.
- (iii) Incised wound 3 x 1 cm x muscle deep on right lower chest with fresh bleeding and surgeon opinion was sought.
- (iv) Incised wound 3 x 1.5 cm muscle deep on lateral surface of right thigh in lower 1/3rd region was present with fresh bleeding. Ortho surgeon opinion was sought”.

Further, Gajja Nand was also medico-legally examined and the following injuries were noticed on his person:-

- “(i) Lacerated wound 8 x 2 cm x bone deep on right forehead with fresh bleeding.
- (ii) Redness in both the eyes were present. Eye surgeon opinion was sought”.

It is also the case of the prosecution that while in custody in FIR No. 228 dated 28.11.2003 registered at Police

Station Sadar, Rohtak under Sections 395 and 397 IPC, Sandeep accused made statement involving himself as well as his other co-accused in the present case. Accordingly, Narinder and Ramesh accused were arrested on 24.1.2004. Both Ramesh and Narinder while being interrogated suffered disclosure statements involving themselves and the other accused in the present case. On 27.1.2004, Ramesh and Narinder accused were taken to a Goldsmith in Chandni Chowk, Delhi pursuant to their disclosure statements. However, they retracted from the said disclosure statements and in their fresh disclosure statements without mentioning about the involvement of their co-accused in the present case and offered to get an amount of Rs.30,000 and Rs.35,000/- respectively with silver bricks of 3 kilograms recovered from their respective houses. Pursuant to the same, Ramesh accused got recovered Rs.30,000/- and two silver bricks weighing 3 kilograms from his residential house. Narinder accused also got recovered Rs.35,000/- and three silver bricks weighing 3 kilograms from his residential house. On 22.1.2004, Inspector Mam Chand, C.I.A. Staff, Rohtak alongwith ASI Kulbir Singh and other police officials reached abandoned kotha from where they apprehended Sandeep, Amit Yadav @ Mitu, Deepak Behlara and two others while they were preparing to commit dacoity at a petrol pump, for which, separate FIR No. 12 of the

same day under Sections 399, 402 IPC and Section 25 of the Arms Act was registered in Police Station Sampla. It is also the case of the prosecution that the accused were sought to be lined up for holding test identification parade but they refused to join the same after stating that their photos had already been published in the newspaper and they were shown to the witnesses by the police.

At the trial of the case, the prosecution examined Dr. Nirija, Radiologist as PW1, Dr. Suresh as PW2, Gopal Dass eye witness as PW3, Dr. Arun Joshi as PW4, Raj Kumar eye- witness as PW6, Girish Singla injured/complainant as PW7, Gajja Nand injured as PW8, Constable Sumit Kumar as PW9, ASI Ram Avtar as PW10, Inspector/SHO Yad Ram as PW11, Constable Veer Bhan as PW12, Shri H.S. Dahiya, ACJM, Rohtak as PW13, Shri Narinder Sharma, JMJC, as PW14, ASI Jai Pal Singh as PW15, EHC Raghbir Singh as PW16, ASI Ram Avtar as PW17, Inspector Mam Chand as PW18, ASI Kulbir Singh as PW19 and HC Dilbagh Singh as PW20. No witness was examined at serial No.5.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against them and pleaded their innocence. None of them made any claim to the case property stating that they had no concern

with it.

In his defence, Ramesh accused examined his father Veer Bhan as DW1.

As mentioned above, learned trial Court acquitted Amit Yadav @ Mitu of the charges against him whereas the appellants were convicted and sentenced.

This Court has heard learned counsel for the appellant as well as learned State counsel and with their able assistance, perused the record.

PW7 Girish Singla and PW8 Gajja Nand supported the prosecution case regarding the infliction of injuries upon them. However, they did not identify the appellants to be the ones, who had caused injuries to them and robbed them of their valuables. PW7 Girish Singla stated that since the occurrence had taken place a year back, he could not recollect the features of the assailants and, therefore, could not identify them in the Court. He further stated that he had seen the accused persons in dim light from a bulb, which was inside the temple. PW8 Gajja Nand stated that the accused persons were in the age group of 22 to 25 years. However, in his cross-examination, he stated that electricity supply had failed at the time of the occurrence and, therefore, he could not identify them.

In support of the ocular account of the occurrence, the

prosecution had also examined PW3 Gopal Dass and PW6 Raj Kumar. However, while in the witness box they stated that they had reached the place of occurrence after it had already been taken place. Both of them were allowed to be cross-examined but they resiled from their respective statements made during the investigation.

In order to establish the identity of the appellants, who according to the prosecution had committed the crime, an attempt was made by the Investigating Agency to hold test identification parade, however, all the accused persons refused to join the test identification parade for the reason that their photos had already appeared in the newspaper and they had been shown to the witnesses.

In order to connect the appellants with the commission of the crime, the police came up with the version that after being arrested they had got recovered certain valuables, which belonged to the complainant party. However, neither at the time of making disclosure statements nor at the time of effecting of recovery of the valuables, the Investigating Officer associate any independent witness. Only official witnesses were cited and examined. All the appellants, according to the prosecution had confessed their involvement in the present crime when their respective disclosure statements were recorded. However, the

factum of confession cannot be used against them being hit by Sections 25 and 26 of the Evidence Act.

In view of the above, it is difficult to upheld the judgment of conviction and sentence passed by the learned trial Court.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set-aside and the appellants are acquitted of the charges against them.

The appellants are presently on bail. Their bail bonds stand cancelled.

January 17, 2018
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No