

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

**CRA-D No.608-DB OF 2010 (O&M)
DATE OF DECISION : 7TH MARCH, 2018**

Haider Ali & others

.... Appellants

Versus

State of Haryana

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Vineet Malhotra, Advocate for
Mr. R. S. Bains, Advocate for appellant No.6.

None for appellants No.1 to 5 and 7.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the order and judgment dated 29.03.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Gurgaon in Sessions Case No.58 of 2008, arising out of FIR No.390 dated 03.12.2008 registered under Sections 460, 396 & 397 IPC at Police Station Sector 5, Gurgaon, by which the present appellants were convicted by the trial Court for offences punishable under Sections 460 & 396 IPC and were sentenced to undergo rigorous imprisonment for life along with fine of ₹5,000/-, the present appeal was filed in this Court by the appellants.

Facts:

2. In brief, the prosecution case is that on 03.12.2007 Anand Singh-the complainant, lodged a report with the Police Station that he

was running a shop in the name and style of Anand Electronics in Ashok Vihar. His father and four workers were living in the workshop. On the date of incident i.e. 03.12.2007 at about 2.30 a.m. he received a phone call that some persons entered his shop and confined the workers in a room and were loading the cable wires on the *rehries*. When he tried to apprehend them they ran away. He came back to the workshop and found that his father was lying dead in the workshop while other *rehri* was found empty. A worker by name Yogender told him that culprits were having iron pipes and *sarias* and they killed his father. On the report, FIR was registered and thereafter the investigation was undertaken. The accused persons were arrested and upon completion of investigation the challan was filed in the Court. All the seven accused persons charged for offence under Sections 460, 396 and 395 read with Section 397 IPC. The trial was held. The prosecution examined as many as 19 witnesses. Thereafter the case was closed. The defence of the accused was of denial. The trial Court heard the entire evidence and thereafter convicted the appellants as above. No defence evidence was made by the accused persons.

Arguments:

3. In support of the appeal, the learned counsel for the appellants vehemently argued that the prosecution did not at all prove its case, much less the identity of the appellants as the same assailants who had allegedly entered the workshop and committed the offences. He further submitted that there was no iota of evidence with the prosecution to show that any of the alleged items i.e. electric cable etc. were

discovered at the instance of the appellants, though it was tried to be shown that the same were discovered on the disclosure statements of the appellants. According to him legal and proper identification of neither accused persons nor the stolen property was made by anybody, including the complainant before the Court or elsewhere and that is why there was no reason to presume any robbery/decoity. It was in the dead hours of the night that incident is stated to have taken place that too in the winter of 2007. The claim made by the complainant that he identified some persons in the light of the car as the same person or robbers, is imaginary and was not at all substantiated by any evidence. The appellants have been convicted merely on the figment of imagination as there is no credible evidence against them. He, therefore, prayed for acquittal of all the appellants.

4. *Per contra*, learned State counsel vehemently opposed the appeal and supported the impugned judgment and order of conviction. He submitted that in the cases of decoity and that too at dead hours in the night, the Court cannot expect the minute-to-minute description of the incident and there was no reason why the identification made by the complainant in the Court could be rejected. According to him the disclosure statements were made by the accused persons and the trial Court made no mistake in relying on the disclosure statements and recovery made by the accused persons in accordance with Section 27 of the Evidence Act. He then submitted that the trial Court has given detailed reasons for recording the conviction of appellants and no interference is required to be made by the present appeal.

Consideration:

5. We have heard learned counsel for the rival parties. We have seen the entire record, including the evidence tendered by the prosecution. The complainant is PW-16 Anand son of Chander Singh. According to him he had received a telephone call from his worker Yogender that 10 or 11 persons entered in the workshop and were loading the cables from workshop on *rehries*. He reached to his workshop in his car and he noticed that bundles of cables were loaded in two *rehries* from the workshop. On seeing the light of the car, the assailants tried to run away towards different sides. He saw them in the light of his car and could identify them. He identified the accused persons present in the Court and also stated that some of them were not present in the Court. He stated that he had chased them in his car but they succeeded in running from the spot. Thereafter, he came back and opened the door of the room of the workers, who told him about the cries heard. He then went to the office and found his father Chander Singh lying dead in the pool of blood on the *charpai*. He also stated that he was summoned by Raj Pal Singh, who was having custody of two accused persons. The accused persons in pursuant to their disclosure statement got recovered computer cable, screw driver from the plot of Manoj/Sanjay, which were taken in possession. The second accused got recovered bundle of computer cable, which he identified. He admitted in his cross-examination that he has disclosed the number of persons as 10 or 11 but in the police statement he had stated their number as 4 to 5. He does not claim that the accused persons were known to him earlier but

claimed that he had seen them for the first time in the late hours of night at 2.50a.m. in the light of his car. The incident took place in the night of winter of 2007 and there is no claim made by him that he had seen them under any other light than the light of his car on the date of incident. There is no claim by the prosecution that identification parade was immediately held after the arrest of the accused persons. His evidence was recorded before the Court on 02.02.2010 and he claimed that he identified the accused persons, though according to him some accused were not present in the Court.

6. A careful perusal of the evidence of PW-16 Anand, will reveal that he has nowhere said a word about the inventory as to the stock of electronic cables in the workshop and the details about the looted articles from the stock in the workshop. The investigating machinery also did not collect any evidence to find out what was the material stored in the workshop and what was really looted by the decoits. This was important because PW-16 has clearly stated in examination-in-chief itself that when he reached near workshop he noticed that bundles of cables were loaded in two *rehries* from the workshop and accused persons were trying to carry the *rehries* from the workshop. But on seeing the light of his car they ran away towards different directions. This clearly means that none of the accused persons succeeded in taking away the *rehries* loaded with cables. Even then, witness PW-16 does not claim that any cables were taken away from the workshop by anybody, much less the appellants. The prosecution has kept this aspect of the matter by way of mystery. Despite this position the claim has been made by the

prosecution that disclosure statements about the recovery of property were made and properties were got recovered by the different accused from different places. If none of the accused took away a single cable/article, but they ran away in all directions, how discovery/recovery of cables etc. could be made? But the trial Court simply ignored this material aspect.

7. The trial Court has also recorded the findings on this aspect by stating that accused Haider Ali had disclosed the cable bundle and *danda* which were concealed by him near Air Force Station. Accused Narayan Lal disclosed that he had kept concealed iron pipe and bundle of cable in Jhuggi. Accused Gopal Dass had concealed cable bundle and *danda* near the wall of Air Force Station. Seepal got recovered screw driver and a bundle of cable from the Jhugi near Sheetla Mata Colony and Sohijul got recovered the cable from jhugi in the plot of Manoj. Seepal got recovered screw driver and one bundle of cable from the jhugi situated in the plot of Sanjay. It is significant to note here that this evidence regarding disclosure and recovery of the property, in the absence of any inventory of the investigation by the police officer as to what property was stolen from the workshop of the complainant and as to what was the stock of the property in the workshop, becomes highly doubtful in the wake of a categorical statement made by PW-16 Anand that bundles of cables were not removed in two *rehries* from the workshop because on seeing the light of the car all the accused persons succeeded in running away from the spot. He does not claim that any of the accused persons carried any cable on their person before running

away from the spot. Viewed in the light of this evidence and the candid admission of PW-16 on this aspect, it is clear to us that prosecution has not been able to bring to the fore the genesis of the prosecution case. It is difficult to imagine that accused persons could succeed in running away by loading the cable on their persons, but that is not his case as well. In our opinion, the disclosure statements and the properties shown to have been recovered from the accused persons, do not appear to be genuine. It is important to note that some property was said to have been recovered from the plot of Manoj or Sanjay. Whosoever Manoj/Sanjay may be and it is not known as to the location of the plots of Manoj or Sanjay. It is extremely difficult for us to believe the entire prosecution story in the wake of the inconsistent evidence going to the root of the prosecution case making it wholly doubtful. PW-10-Yogender and PW-11-Raj Kumar were locked in the room till the door was opened by the complainant-Anand.

Conclusion:

8. In a serious case of decoity with murder, to convict accused persons on the basis of self-contradictory and inconsistent evidence, would be nothing but a miscarriage of justice. We do not want to make such an error. We are, therefore, of the firm opinion that the prosecution has failed to prove its case beyond reasonable doubt.

9. The upshot of the above discussion is that the present appeal must succeed. In the result we make the following order:

ORDER

(i) CRA-D No.608-DB OF 2010 is allowed.

- (ii) Impugned judgment and order of conviction and sentence of all the appellants, dated 29.03.2010/31.03.2010 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon in the Sessions Case No.58 of 2008, arising out of FIR No.390 dated 03.12.2008 registered under Sections 460, 396 & 397 IPC at Police Station Sector 5, Gurgaon, are set aside.
- (iii) All the appellants i.e. appellant No.1-Haider Ali, appellant No.2-Sohijul, appellant No.3-Seepal, appellant No.4-Narayan Lal, appellant No.5-Gopal Dass, appellant No.6-Shokat Ali and appellant No.7-Mohd. Akbar, are acquitted of the charges leveled against them.
- (iv) The appellants are ordered to be released forthwith, if not required in any other case.
- (v) Insofar as appellant No.6-Shokat Ali son of Tafsil Ali, is concerned, he is native of Bangladesh. State is directed to take appropriate steps to deport him to Bangladesh, accordingly.

7TH MARCH, 2018
'raj'

(A. B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>