

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.D-743-DB of 2011

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Date of decision:27.3.2018

Ramu and others

...Appellants

v.

State of Haryana

...Respondent

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**Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice Inderjit Singh**

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Present: Ms. Deepa Jain, Advocate for the appellants.

Mr. Vivek Saini, Deputy Advocate General, Haryana for the
respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by Ramu, Jeevan, Ombir, Raju alias Sukha, Ranjit alias Suba, Bir Singh and Jhanku alias Vijay challenging the impugned judgment of conviction and order of sentence dated 10.5.2011 passed by learned Additional Sessions Judge IV, Bhiwani, vide which the accused-appellants have been convicted for the offences under Sections 396 and 460 IPC. However accused, namely Phoolpati alias Phula, Laxmi, Rukmani, Ratni alias Dropadi, Ram Singh and Govinda alias Baba have been acquitted. Accused-appellants have been sentenced to undergo life imprisonment and to pay fine of ₹25,000/- each and in default of payment of fine to further undergo simple imprisonment for three months each for the offence under Section 396 IPC. They have further been sentenced to undergo rigorous imprisonment for ten years and to pay fine of

₹25,000/- each and in default of payment of fine to further undergo simple imprisonment for three months each for the offence under Section 460 IPC.

The brief facts of the prosecution case as noted down by the learned trial Court in the impugned judgment dated 10.5.2011 are as under:-

“In brief, it is case of the prosecution that on 13.4.2010, on receipt of telephonic information in the Police Station, regarding the death of a man, police party reached the place of occurrence, where it met Rajshri wife of Upender Singh, who made complaint alleging that her husband Upender was serving the Army for the last 11-12 years and had come to his house on leave for a period of one month. They have constructed their house outside the village where their family and the family of her brother-in-law (devar) Charan Singh were living jointly. One day, prior to the day of occurrence, Charan Singh had gone to his in-laws house in Bhiwani City along with his family. On the day of occurrence, her husband was watching television in one room of the house after having dinner and she was sleeping in another room along with her children when 5-6 persons entered her room around midnight and they gagged her and removed her gold chain from her neck, gold tops from her ears, silver pajeb and two gold bangles from her hands. Thereafter, she heard the scream of her husband as if he had been assaulted. The persons in her room threatened her not to raise an alarm otherwise they would kill her husband and children

and if she looked up, they would kill them. The two men remained standing next to her and the other started searching the other rooms and they were also saying that they used to travel on the road frequently and were told by the villagers that the army man had returned to his house. Thereafter, they closed her room but they returned after some time and took away their phone which had number 08004189297. They again threatened her not to raise an alarm. After 10-15 minutes, she called out her husband but she did not get any response. Thereafter, she started shouting for help loudly. At round 3.00/4.00 A.M. 7-8 men and some women of their village opened the door of her room and thereafter, they all started searching her husband and they found him lying in the room meant for cattle with his hands and legs tied up. He had injuries on his head and all over his body. The villagers arranged for a vehicle and while they were around to take her husband to the hospital, he succumbed to his injuries. Their household articles were lying scattered. She would give information regarding the stolen articles after checking her belongings.

On complaint of Rajshri, written intimation was sent to the Police Station, upon which formal FIR was lodged and endorsement was made. Investigation began. Post mortem examination on the dead body of Upender was got conducted and after obtaining post-mortem report, inquest report under

Section 174 of the Code of Criminal Procedure, 1973 was prepared. Rough site plan of place of occurrence was prepared. Accused were arrested. Their disclosure statements were recorded and in pursuance of their disclosure statements, the stolen articles were recovered. Statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 were recorded. After completing all the usual formalities, the final report under Section 173 of the Code of Criminal Procedure, 1973 was submitted in the Court.”

On presentation of challan, the trial Court finding prima facie case against the accused-appellants framed charges for the offences punishable under Sections 396, 460, 216-A and 419 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Rajshri, who deposed consistently as per prosecution version. She also deposed regarding the identification of the ornaments which were recovered by the Police from the accused persons. She proved three golden chains Exs.P.1 to P.3, two heavy golden bangles (Karas) Exs.P.4 and P.5, six golden finger rings Exs.P.6 to P.11, one golden 'Nath' Ex.P.12, one pair of golden ear rings Ex.P.13, two golden Tikkas Exs.P.14 and P.15, one pair of golden ear Jhumka Ex.P.16, one pair of golden ear Topas Ex.P.17, one pair of silver pajeb Ex.P.18 and cash amount of ₹6,980/-. She also identified three accused, namely, Jeevan Ram, Ombir and Govinda alias Baba, who came to her house on 12.4.2010 at about 10-11 a.m. and the witness served food to

them and the accused, who came in the night were also present in the Court that day. PW-2 Anil mainly stated that on 5.5.2010, Vijaypal, Inspector interrogated accused Ombir, Jeevan and Govinda alias Baba in his presence and in the presence of Sunderpal and during interrogation disclosure statements were made and accused Govinda alias Baba suffered disclosure statement and got recovered currency notes of ₹2,980/- as per his disclosure statement. PW-3 Joginder mainly deposed regarding identification memo of the place of occurrence. Accused Bir Singh and Ramu were in police custody, who took the police party along with them near Railway Station Bhiwani. PW-4 Dr. Harpreet Kaur conducted the post-mortem examination on the dead body of Upender and found the following injuries:-

- “1. L/W 6 into 2 cm present on the right fronto partial region of the skull with underlying bone fractured extra dural and intra dural hemotoma present.
2. A bruise present all around the right eye which is bluish in colour no internal injury present in the eye.
3. Abrasion present right shoulder with 5 into 2 cm in size.
4. Bilateral Ear bleed present along with bleed from nose.

At the time of postmortem walls ribs and cartilages, plourse, right and left lung-healthy, larynx and trachese health and pale, pericardium heart large vessel healthy all chamber full of blood, abdominal wall, peritoneum, mouth pharynx and oesphagus healthy, stomach and its contents healthy and semi-digested food present small intestines healthy and normal contents large

intestine healthy with fecal mater, liver spleen kidneys healthy, bladder 20 CC urine present, organs of generation healthy.

In our opinion the cause of death in this case was due to head injury which is sufficient to cause of death in ordinary course of nature. All injuries are antemortem in nature. Probable time between injury and death variable, between death and PMR within 24 hours. Handed over to the police well stitched dead body, police paper 1 to 8 signed by us. Copy of PMR, A pulanda with 5 seals containing dead body clothes, sample of seal.”

PW-5 Jaipal Singh, Sub-Inspector deposed regarding the investigation and recovery of ₹2,000/- currency notes on the basis of disclosure statement of Ramu, ₹2,000/- currency notes on the basis of disclosure statement of Bir Singh. He also deposed regarding the disclosure statements given by accused Ranjit, Raju and Murari and the recovery of ornaments. PW-6 Manjit Singh, Head Constable deposed regarding the disclosure statements of Raju and Ranjit and the recovery of gold ornaments as per their disclosure statements. He also deposed that on 30.5.2010, accused Ajay alias Jhanku was arrested in the case. He also suffered disclosure statement. He further proved the recovery of six pairs of silver Pajeb. PW-7 Dharmender Singh, Draftsman mainly deposed regarding the scaled site plan Ex.PS. PW-8 EHC Jai Parkash Singh deposed regarding delivery of special report. PW-9 ASI Prem Singh, who was posted as MHC in Police Station Sadar Bhiwani, at that time, is a formal witness, who tendered in

evidence his affidavit. PW-10 Constable Mahabir Singh is a formal witness, who tendered in evidence his affidavit. PW-11 Ranjit mainly deposed that slums of accused Rukmani, Phoolpati and one girl, who was present in the Court were situated at Chirawa. PW-12 Dr. Ravinder Pal mainly deposed regarding preparing rough report at the spot on the basis of the observation as per place of occurrence and after preparing his final report Ex.PX. PW-13 Brahm dass, Sub-Inspector/Photographer deposed regarding the photographs. PW-14 Prem Chand, Retired Inspector deposed regarding the investigation conducted in this case, preparing the inquest report, regarding the statements of the witnesses etc. PW-15 Vijaypal, Inspector deposed regarding the disclosure statements and recovery by Ombir, Jeevan and Govinda alias Baba. He also deposed that on 16.5.2010, he arrested accused Murari, Ranjit alias Sukha, Raju, Bir Singh and Ramu from Bangali Colony, Udham Singh Nagar, Kichchha (Uttarakhand). He also proved the disclosure statements given by these accused and recovery of gold ornaments and currency from Ombir, Jeevan and Govinda. He deposed regarding the arrest of these accused and their disclosure statements etc. During interrogation, accused Ramu suffered disclosure statement Ex.PH and got recovered ₹2,000/- which came to his share of booty from the robbed amount. Accused Bir Singh also got recovered ₹2,000/- in pursuance of his disclosure statement Ex.PJ which came to his share from the robbed amount which had been kept concealed by him in a box in his slum and as per their disclosure statements both these accused Ramu and Bir Singh got recovered the amount and the same were taken into

possession. On 18.5.2010, accused Ranjit and Raju suffered other disclosure statements Ex.PCC and Ex.PDD stating that their previous disclosure statements were wrong. On 19.5.2010, accused Jeevan made another disclosure statement Ex.PEE stating therein that his previous disclosure statement was wrong and in fact he had kept concealed the ornaments, which came to his share, after digging the earth near a well at Railway Station Dahina and he could get the same recovered. Accused Ombir made another disclosure statement Ex.PFF stating therein that his previous disclosure statement was wrong and in fact, he had kept concealed the ornaments, which came to his share, in a corner of an abandoned room at Dahina near their old slums and he could get the same recovered. On the same day in pursuance of the disclosure statement, accused Jeevan got recovered one golden ear ring and two heavy golden bangles (Karas) and the same were taken into police possession vide recovery memo. On the same day Ombir also got recovered one golden chain and silver Pajeb in pursuance of his disclosure statement which were taken into police possession. On 22.5.2010, he interrogated accused Raju and Ranjit alias Sukha and during interrogation, accused Raju suffered disclosure statement Ex.PN stating therein that he suffered wrong disclosure statement on 18.5.2010 and he got recovered two golden ear rings (Kundals), one male golden ring, two golden 'tikkas' and one pair of golden ear rings (Chhalle) and the same were taken into possession vide recovery memo. Ranjit got recovered in pursuance of his disclosure statement, two golden chains, five golden rings and one golden ornaments of nose (nath) and the same were

taken into possession vide recovery memo. On 30.5.2010, accused Vijay alias Jhanku was arrested by him near the Railway Station, Lohari. He suffered disclosure statement Ex.PR and got recovered six pairs of silver pajeb, which came to his share, in pursuance of his disclosure statement, after digging the earth which were situated under the bushes near Railway Station, Rewari and the same were taken into possession. Then the evidence of the prosecution was closed.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. The accused denied the correctness of the evidence and pleaded themselves as innocent. No defence evidence was produced.

The learned trial Court vide the impugned judgment of conviction and the order of sentence convicted and sentenced the accused-appellants as stated above and acquitted accused, namely, Phoolpati alias Phula, Laxmi, Rukmani, Ratni alias Daropadi, Ram Singh and Govinda alias Baba.

At the time of arguments, learned counsel for the appellants argued that no cogent evidence has been produced by the prosecution in the present case to prove the guilt of the accused-appellants beyond reasonable doubt. The accused-appellants have been falsely implicated in this case and the recoveries have been falsely planted upon them.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved. The recoveries of looted ornaments

and currency notes had been effected. Even complainant PW-1 Rajshri identified the appellants Jeevan and Ombir as she also stated that accused who came in the night were the persons present in the Court on the day of her deposition. He further argued that the looted articles specially the golden ornaments and currency notes had been recovered from the present appellants which connect them with the crime. There is no explanation as to how these articles came to them. They themselves had made the disclosure statements and got recovered the currency notes and ornaments which ornaments had been identified by PW-1 Rajshri-complainant. He argued that the case of the prosecution has been duly proved by the eye witness Smt. Rajshri, from the disclosures and the recoveries made under Section 27 of the Evidence Act and further investigation of the case. He argued that the PWs have consistently deposed regarding the prosecution version and there is nothing to disbelieve the statements of these PWs.

We have heard learned counsel for the appellants and learned State counsel for the respondent-State and have gone through the record minutely and carefully.

From the record, we find that PW-1 Rajshri, who was present in the house when this occurrence took place, has consistently deposed regarding the prosecution version. Her husband Upender was killed at that time by causing injuries and that evidence has also been duly supported and corroborated by the medical evidence. PW-1 has also identified the ornaments which the Police got recovered from the accused-appellants. PW-15 Vijaypal, Inspector has deposed regarding the disclosure statements

made by the accused and also the recovery of gold ornaments from Jeevan, Ombir, Raju, Ranjit and Jhanku-appellants. There is nothing in the cross-examination of these PWs which may make the prosecution version improbable. No material contradictions or improvements have been pointed out at the time of arguments. The recovery of looted golden ornaments connect the accused-appellants with the crime. The witnesses are reliable witnesses. There was no enmity with the accused to falsely implicate them in the crime. Therefore, appellants-Jeevan, Ombir, Raju, Ranjit and Jhanku, from whom looted golden and silver ornaments have been recovered, are found involved in the commission of the offence. The prosecution has proved the case against them beyond any reasonable doubt. PW-1 has also identified specifically appellants-Jeevan and Ombir, who had come one day earlier to the house in the guise of selling TV and fridge cover etc. and had also taken food which was served by PW-1. PW-1 has also deposed that the accused present in the Court were the same persons who came at night on that day. No reasonable doubt exists relating to the involvement of the appellants Jeevan, Ombir, Raju, Ranjit and Jhanku. Therefore, the judgment passed by the learned trial Court convicting and sentencing them is correct as per evidence and law and the appeal qua them is liable to be dismissed.

As regards appellants-Ramu and Bir Singh, a reasonable doubt exists in the prosecution version. Only ₹2,000/- currency notes from each of the accused had been recovered. A reasonable doubt exists regarding the fact whether these currency notes can be connected with the amount stolen from the house. There is no specific mark on the currency notes nor their

numbers. Otherwise also, the amount is only ₹2,000/- which a person can possess by earning ordinarily. Therefore, only due to the recovery of ₹2,000/- currency notes each from Ramu and Bir Singh, they cannot be connected with the crime beyond a reasonable doubt. The prosecution has failed to prove the case against Ramu and Bir Singh beyond a reasonable doubt. Therefore, by giving the benefit of doubt to them, the appeal qua them is allowed and the impugned judgment of conviction and order of sentence passed by the learned trial Cour qua them are set aside and they are acquitted of the charges as framed against them.

Therefore, from the above discussion, this criminal appeal qua appellants No.2 to 5 i.e. Jeevan, Ombir, Raju alias Sukha, Ranjit alias Suba and appellant No.7-Jhanku alias Vijay is dismissed.

The present appeal qua appellant No.1-Ramu and appellant No.6-Bir Singh is allowed. The impugned judgment of conviction and order of sentence passed in Sessions case No.62 of 2010 decided on 10.5.2011 by learned Additional Sessions Judge-IV, Bhiwani, for the offences under Sections 396 and 460 IPC are set aside qua them. Appellant No.1-Ramu be released forthwith from the jail, if not required in any other case. As appellant No.6-Bir Singh is on bail, therefore, his bail bonds and surety bonds shall stand discharged.

(A.B. Chaudhari)
Judge

(Inderjit Singh)
Judge

March 27, 2018.

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No