

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

CRA-S No.435-SB of 2004 (O&M)

Date of decision: 8th October, 2018

Rattan Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gursharan Singh, Advocate for the appellant.

Mr. H.S. Sullar, Dy. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

Two accused, Rattan Singh the present appellant and then his co-accused Bimal Kumar who has since been acquitted, were jointly tried in case bearing FIR No.289 dated 27.06.2002 under Sections 307/458/328/381 IPC pertaining to Police Station Division No.5, Ludhiana. It is through the impugned judgment of conviction and order of sentence dated 07.02.2004, the Court of learned Additional Sessions Judge, Ludhiana acquitted Bimal Kumar however, holding the present appellant guilty for commission of offences under Sections 458/307/328/381 IPC, sentenced him as under:

Offence

Sentence

u/s 458 IPC To undergo rigorous imprisonment for four years

and to pay a fine of Rs.200/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

u/s 307 IPC To undergo rigorous imprisonment for four years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

u/s 328 IPC To undergo rigorous imprisonment for three years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

u/s 381 IPC To undergo rigorous imprisonment for two years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

All the substantive sentences were ordered to run concurrently. The same is subject matter of challenge before this Court in the present appeal.

Upon hearing Mr. Gursharan Singh, Advocate for the appellant; Mr. H.S. Sullar, Deputy Advocate General, Punjab representing the respondent/State and on perusal of the records of the case.

The present case was got registered by Dr.Subash Sachdeva who in his statement made on 27.06.2002 Ex.PB before HC Jagdev Singh, has stated that he was a resident of Sant Ishar Singh Nagar, Pakhowal Road, Ludhiana and that his wife Dr.Pawan Sachdeva resides with him and that the couple had employed a domestic servant Bimal Kumar. It is further stated that the complainant had his clinic near Dandi Swami Chowk, where the convict appellant, a resident of Himachal Pradesh, was employed and on account of this, both the accused were known to each other. It is alleged that on 27.06.2002 around 9:00 p.m. when the complainant reached his home, he saw his neighbour rushing towards the house of the complainant and when the complainant too reached there, he heard shrieks of his wife remarking that the appellant Rattan Singh was roaming armed with knife and taking out cash and ornaments from the Almirah and in order to save herself she has hid herself in the bathroom and had bolted the door. The accused is reported to have fled thereafter. The victim told the complainant that the accused had forcibly given her intoxicating injections and sleeping pills and tried to strangle her. The co-accused Bimal Kumar, the domestic servant, too had run away in the meanwhile. The motive behind this occurrence, as stated by the complainant, is that a few days prior to this occurrence, both these employees had been thrown out of service by them. On the basis of this statement, FIR Ex.PW4/B was recorded. The investigating

officer prepared rough site plan of the place of occurrence Ex.PW4/C. In the meanwhile, on hot pursuit the accused appellant Rattan Singh was apprehended and brought to the place of occurrence. From the personal search of the accused by HC Jagdev Singh, two golden rings, three signed cheques, two visiting cards of the complainant and currency notes amounting to Rs.1050/- were recovered. The gold articles were converted into parcel and sealed with the seal of HC Ram Saran bearing impression 'RS' and thereafter taken into police possession vide recovery memo Ex.PW3/A. The co-accused Bimal Kumar was subsequently arrested on 04.07.2002. The victim was medico-legally examined. Statements of the witnesses were recorded and on completion of investigation, challan was presented in Court. The accused pleaded not guilty and claimed trial.

The prosecution, at the trial, examined PW1 HC Ram Saran; PW2 Dr. Subash Sachdeva, the complainant; PW3 Dr.Pawan Sachdeva, the victim; PW4 HC Jagdev Singh, the investigating officer; PW5 Maninder Pal, the neighbour; PW6 Dr.U.S. Sooch and PW7 Inspector Gurchetan Singh, and the prosecution evidence was thereafter closed. The accused were put the entire incriminating evidence, to which they denied in their individual stands taken in their statements under Section 313 Cr.P.C. but did not lead any evidence in their defence. It was consequent thereupon, the impugned findings were recorded.

During the course of arguments, Mr.Gursharan Singh, Advocate representing the appellant does not dispute the fact and so is the stand of the accused at the trial that he was employed with the complainant family and had been fired from service. The prosecution evidence, through PW6 Dr.U.S. Sooch, has proved the medico-legal report of the victim Dr.Pawan Sachdeva as Ex.PW6/A and its pictorial diagram depicting receipt of injuries as Ex.PW6/B and police request for medico-legal examination as Ex.PW6/C. A close look at these injuries reveals that the doctor has observed superficial horizontal abrasion on mid front and both lateral sides of the neck; four abrasions on the right mid lateral side of the neck; two abrasions on the mid front of the neck; multiple superficial abrasions on the front and upper part of the chest; an incised wound on the right middle and ring finger with clotted blood present; two linear abrasions on the dorsum of right hand; two needle prick marks on the front of right elbow; redness on the right supra-scapular area; multiple linear abrasions on both the breasts and multiple abrasions on the inner side of both thighs. Though this doctor has opined all the injuries to be simple in nature within six hours and has further stated that injury No.5 was caused by a sharp edged weapon and the rest were caused by blunt edged weapons. There is no substantial cross-examination of this witness to derail his testimony. The testimony of the victim as PW3 bears out the version of a victim whereby the accused

stealthily had entered the bedroom of the victim and caught hold of her and tried to strangle her by wrapping a plastic wire around her neck and when she resisted, the accused rushed to the kitchen and brought a knife and under this threat he got three blank cheques signed from the victim which have been proved as Ex.P5, Ex.P6 and Ex.P7. The witness has further stated that the accused under this threat has taken out approximately Rs.1000/- lying in the purse of the victim and removed her two golden rings which she was wearing and when the accused tried to give a blow of knife she raised both of her hands on her face, as a consequence of which the knife hit her on the right hand.

Though learned counsel for the appellant has sought to harbour around the inapplicability of Section 307 IPC by stating that none of the injuries was life-threatening and there is nothing substantial proved on the record to corroborate the same. It is the case of the victim, as detailed by the prosecution, that the accused had tried to strangle the victim and also attempted to give her injuries by means of knife. It needs to be reasserted here that Section 307 IPC is not attracted only if the victim receives an injury but can be applied even if there is no injury on the person of the victim. The essential ingredients that needs to be proved for an offence to fall under Section 307 IPC are that there was an attempt to cause death of a human being and which attempt was caused by, or in consequence of the act of the accused and which was with the

intention of causing death, or that it was done with the intention of causing such bodily injury which, the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death. The medico-legal report Ex.PW6/A with pictorial diagram Ex.PW6/B clearly enumerates the injuries around the neck area and it is by mere providence, the victim has escaped death. There are ten injuries on the person of the victim, proved by PW6 Dr. U.S. Sooch and the motive for causing these injuries is well elaborated and not successfully rebutted by the defence at the trial. The arguments of learned counsel for the appellant that the prosecution has not recovered and proved on record the wire used to strangle the victim and therefore does not corroborate the version, has been rightly controverted by the learned State counsel who has argued that the plastic wire has been proved to have been taken into police possession through memo Ex.PW3/A from the pocket of the pants of the accused, which is elaborated by the investigating officer; and thus, there is clearly established evidence that the accused had attempted to kill the victim by means of strangulation and further the knife blows given on the victim are corroborated by the medical means and it is another reason that the victim managed to rush out of the room when the accused were busy in collecting the articles, and locked herself in the bathroom and therefore, escaped from unfortunate consequences. Though PW5 Maninder Pal, a neighbour of the complainant, has resiled from the

testimony and has been declared as hostile by the Court below on State request and therefore, as per the submissions of learned counsel for the appellant, no benefit can be derived from the testimony of this witness; but he certainly establishes the fact that an occurrence has certainly taken place at the date, time and place so alleged by the complainant side and also the fact that the victim had locked herself in the bathroom of the house and it was in the presence of this witness, her husband Dr.Subash Sachdeva had taken her out, are certainly matters of much relevance. Corroboration to the testimony of the victim PW3 is given by PW2 Dr. Subash Sachdeva, the complainant, who though had not witnessed the actual occurrence, but had come across the after-effects of this incident. Thus, from all this, commission of offence under Section 307 IPC, as has been argued by the learned State counsel, certainly stands established and the learned lower Court has rightly drawn the conclusion to this effect.

The second line of submissions that has come about from the side of the appellant, is as to the applicability of Section 458 IPC. Section 458 IPC deals with lurking house-trespass at night time. The occurrence in the present case has taken place around 9:00 at night. Accused Rattan Singh had already been thrown out of service by the complainant side and his forcible entry into the house and assaulting the victim not only causing her injuries but in the process with the intention to loot her, he has taken away under extortion cash, made her sign on the blank cheques

and also removed the golden rings so worn by the victim and which articles have been proved to have been recovered from the conscious physical possession of the accused by PW4 HC Jagdev Singh, the investigating officer, who has taken the articles into police possession through memo Ex.PW3/A and has proved the recovery of visiting cards Ex.P8 and Ex.P9, cheques Ex.P5 to Ex.P7 and the golden rings which have been identified and proved as Ex.P3 and Ex.P4. The victim, who is the most natural and reliable witness, having suffered this ignominy of crime, has clearly stated how the accused entered stealthily into their house and then to their bedroom and all of a sudden caught hold of the victim and started strangulating her by wrapping a plastic wire around her neck. The injuries have been well established on the medico-legal examination proved by the doctor who examined the injured immediately after the occurrence. To prove the charges to bring home the offence under Section 458 IPC, what is necessitated is that the accused committed lurking house trespass at night and that he had made preparations and arrangements for causing hurt and assaulting the persons therein and therefore, the necessary ingredients attracting this offence are well established in this case. Learned counsel for the appellant could not impress this Court by his arguments how offence under Section 458 IPC was not made out and the learned trial Court has rightly held it so.

The next line of submissions revolves around the very applicability of Section 328 IPC. Section 328 of the Indian Penal Code contemplates that it was the accused who administered or caused to be taken by the victim, poison or an article which has stupefying or intoxicating effect and which was with an intent to cause hurt to such person, or with an intent to commit or to facilitate the commission of an offence and in the process cause hurt to the victim. In the present case, Dr.Pawan Sachdeva PW3, the victim, has clearly borne out the factum of assault by the accused, but it is there in her examination in-chief that on bed-side, few tablets of compose were lying and the accused tried to put the same in her mouth and he managed to put these tablets in her mouth but thereafter she spilled the it out; and further states that the accused had a box with him and he took out an injection from the box and tried to give it to the victim, who resisted his attempt. However, a close look at the testimony of the investigating officer shows that there is clear admission in his cross-examination that he did not come across any medicine at the spot. More so, he admits that no bag was recovered from the possession of the accused Rattan Singh. Furthermore, the victim in her deposition by way of cross-examination when confronted with her initial statement Ex.PA has admitted that the police on the day of occurrence did not take into possession the box from which the accused had taken out the syringe, and volunteered that she has handed over the

box to the police later-on but she does not remember the date. Thus, from this all, the non-recovery of the syringes at the time when the investigating officer inspected the place of occurrence or any tablets so claimed to have been administered and vomited out by the victim, the total lack of any medical evidence to corroborate that she was administered such an intoxicating or stupefying substance or any injury around the face to show forcible administration of such an article, are matters of much relevance, besides the fact as has been submitted by learned counsel for the appellant that there is no report of chemical analyst to show that any stupefying or intoxicating article was found including tablets or injections, the Court below has wrongly construed that the offence under Section 328 IPC was attracted in the present case. From what has been detailed and discussed above, the very story to this effect is certainly not above doubt and rather the prosecution has miserably failed to prove commission of offence by the accused under Section 328 IPC. Thus, giving benefit of doubt, the accused is acquitted of the charges under Section 328 IPC and the sentence so awarded under this head is thereby set aside.

The other offence for which the accused has been convicted is under Section 381 IPC. Section 381 IPC contemplates that the accused must be a clerk or servant or employed in such capacity with the victim and that he commits theft in respect of the property of the employer

which was in his possession. However, in the present case, it has nowhere come in the evidence of the prosecution to this effect documentarily. Even the investigating officer in his cross-examination accepts that he did not take into possession any record regarding the accused being in service of the complainant, and thus, rules out adducing of documentary evidence to this effect; together with the fact that though a suggestion has been put to PW3 Dr.Pawan Sachdeva, the victim, that they owed salary to the accused on account of which he has been falsely implicated, but that does not absolves the prosecution of its burden of proving the case beyond the shadow of reasonable doubt. Learned State counsel was unable to answer the query of the Court what substantial evidence worth reliance is there on the record to establish this fact. Thus, to the mind of this Court, conviction under Section 381 IPC is highly inappropriate. It is the case of the prosecution, right from the inception that the accused had criminally house trespassed at night time and after injuring and threatening the victim, had taken away gold valuables and blank signed cheques which is a valuable security, and therefore, there is clear cut delivery of property and valuable security which was obtained by the accused by putting the victim under fear of death and thus, had adduced her to part with and which the accused has done intentionally and therefore, this evidence in the light of the testimony of the victim PW3 Dr.Pawan Sachdeva attracts offence of extortion defined under Section

383 IPC. Section 384 IPC provides punishment for extortion. The difference between theft and extortion needs to be elaborated here to judiciously appreciate what offence the accused might have committed. The very act of extortion is an outcome of wrongfully obtaining consent whereas in theft there is no element of consent; and in case of extortion it may be immovable or movable property but in case of theft it is always a movable property which is the subject matter. The main essential ingredient to distinguish between theft and extortion is that extortion is carried on by overpowering the will of a person for possession of the property whereas in theft intention of the accused is to take away the property without consent of that person. In the present case, the allegations that are borne out from the oral testimony of the victim PW3 Dr. Pawan Sachdeva, the recovery of these movable properties consisting of signed blank cheques of the victim which are from the joint account, the golden rings and cash, have been obtained by the accused injuring and putting the victim under fear of death and therefore, to the mind of this Court, clearly attracts commission of an offence punishable under Section 384 of the IPC. Thus, the impugned judgment has misconstrued the evidence of the prosecution by convicting the accused with the aid of Section 381 IPC and therefore, the impugned judgment is modified to this extent and the accused is held guilty for commission of offence under Section 383 IPC which is punishable under Section 384 IPC. However,

the sentence so awarded under Section 381 IPC by the trial Court shall remain the same.

In the light of what has been detailed and discussed above, the impugned judgment stands modified to that extent and finding no merit otherwise in the instant appeal, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

October 8, 2018

rps

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