

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

**Crl. Appeal No.D-41-DB of 2015 (O&M)
Date of Decision: April 03, 2018**

Sunil @ Shisha and others

...Appellants

VERSUS

State of Haryana

...Respondent

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

Present: Mr.Balraj Gujjar, Advocate
for the appellants.

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

INDERJIT SINGH, J.

The present appeal has been filed by the appellants challenging the judgment of conviction dated 29.11.2014 and order of sentence dated 11.12.2014 passed by learned Addl. Sessions Judge, Bhiwani, whereby they were convicted under Sections 302/34, 392/397, 394 and 412 IPC and sentenced to undergo imprisonment for life under Section 302/34 IPC along with other sentences and fine. All the sentences were ordered to run concurrently.

The brief facts of the case are that Vinod Kumar, complainant got recorded his statement to Inspector/SHO Raj Kumar at Police Station

Sadar, Bhiwani on 21.03.2012 as under:-

“Stated that I am resident of village Pehladgarh and is serving as Inspector in Food & Supply Department, Bhiwani. On 20.3.12, at about 8.15 PM, I and Subhash son of Kalu Ram Aahir and Rajbir son of Kanwar Singh, caste Aahir, residents of Prahladgarh were sitting on the bank of the road near the field of Rajbir son of Kanwar Singh Aahir, resident of Prahladgarh, then three young boys came from the direction of Dhana Narsan on a motor-cycle and stopped the motor cycle there, out of whom, one was wearing a helmet, who after removing the helmet hit its blow on my face, which struck on my nose and the blood came out and also removed the papers, mobile no.9992805970 and Rs.3000-4000 and also gave knife blow on my back and snatched the key of my motor-cycle and when Subhash and Rajbir, came to intervene then the aforesaid three persons gave knife blows to them. I can identify the aforesaid three boys if they are produced before me. Subhash and Rajbir were lying there due to the injuries and they went towards Prahladgarh after taking my motor-cycle HONDA SHINE No.HR-16K-3689. Thereafter, I and Subhash went to the Hotel of Om Parkash Prahladgarh for assistance, but the vehicle could not be arranged for taking Rajbir. After that, I went to my home and then Subhash went to the house of Sube Singh Ex-Sarpanch, who after giving our vehicle to Dharmender sent Rajbir to hospital for admission after removing him from the spot. Subhash with the assistance of Sube Singh reached at the spot on a vehicle. Rajbir and Subhash were brought to the hospital by Sube Singh Ex.Sarpanch and the family members of Subhash. My brother alongwith vehicle came at home. In the night, I obtained first aid from a private doctor, but the blood could not be stopped in the morning and my brother Dharmender got me admitted at Bhiwani hospital. I heard that Rajbir expired in PGIMS Rohtak and Subhash was admitted in PGIMS Rohtak due to several injuries. Three unknown boys caused them injuries and they also snatched the motor-cycle, watch and mobile. Rajbir died due to these injuries. Action be taken against these unknown boys.”

On the basis of above statement, FIR No.128 dated 21.03.2012 was registered. On 23.04.2012, accused Krishan and Sunil were arrested in case FIR No.179 dated 23.04.2012 under Sections 398, 401 and Section 25 of the Arms Act and they suffered disclosure statement regarding commission of offence in the present case. Accused Sunil and Krishan were arrested in this case after joining them in the investigation on 24.04.2012.

Accused Rajesh @ Mota was joined in the investigation of this case on 26.04.2012 and he was also arrested. The snatched motorcycle bearing No.HR-16K-3689, mobile phone Mark-Nokia were recovered as per disclosed statement of the accused and iron chura (knife) used in the commission of offence was also recovered and opinion regarding injuries on the person of Subhash was taken, and thereafter, Section 397 IPC was added on 02.07.2012. Statements of witnesses were recorded. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellants under Section 207 Cr.P.C. Finding prima facie case, the appellants were charge-sheeted under Sections 392, 397, 394, 302 read with Section 34 IPC and 412 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Anil Kumar, PW-2 Vinod Kumar, PW-3 Sh.Sanjay Bishnoi, Tehsildar, Bhiwani, PW-4 Sh.Rama Nand, Naib Tehsildar, Bhiwani, PW-5 Rajiv Kawatra, Senior Scientific Officer, (Serology) FSL Madhuban, PW-6 Kuldeep, PW-7 S.I. Balbir Singh, PW-8 Subhash, PW-9 Rohit Kumar, PW-10 HC Dharamender Singh, Draftsman, PW-11 Retired ESI Suresh Kumar, PW-12 Retired S.I. Barham Dass, Photographer, PW-13 Retired S.I. Suresh Chand, PW-14 Head Constable Kuldeep Singh, PW-15 Constable Vinod Kumar, PW-16 S.I. Ram Avtar, HPA Madhuban (Karnal), PW-17 Constable Vikas, PW-18 Dr. Deepak Choudhary, MM, Medical College Mulana (Ambala), PW-19 Dr. Millo Talo, Sr. Resident, ESI Hospital, Basaidharapur, Delhi, PW-20 Dr. Kunal Khanna, Department of Forensic Medicines, PGI

MS Rohtak, PW-21 Retired ESI Prem Singh, PW-22 Anita, PW-23 Dr. Krishan Kumar, SMO, General Hospital, Bhiwani, PW-24 Dr.Sachin Kumar, Medical Officer, General Hospital, Tohana, PW-25 Dr.Sweta Wadhwa, Radiologist, Max Hospital, Delhi, PW-26 DSP Virender Singh, PW-27 Sh.Jagat Singh, DSP Loharu and PW-28 Rajesh Kumar, DSP Narnaul.

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.

No witness was examined in defence.

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

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that in the present case, PW-2 Vinod Kumar, injured-complainant and PW-8 Subhash injured-eye witness have not identified the accused in the Court and therefore, identity of the accused has not been established beyond doubt and accused are entitled to acquittal on this ground alone. He further argued that the knife, which was stated to be recovered from accused Rajesh @ Mota was sent to FSL but the material was found disintegrated as per FSL report. The clothes of all the accused were also sent but report of FSL has been received qua Rajesh @ Mota only having blood stains. He next contended that the mobile phone as well as motorcycle have been falsely planted upon the accused. Learned counsel for the appellants,

therefore, argued that there being merit in the present appeal, the same

should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. The recovery from the accused along with other evidence duly connect the accused with the crime. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

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

From the evidence on record, we find that PW-2 Vinod Kumar, complainant, in chief-examination has specifically stated that he cannot say whether the accused, present in the Court, are the same assailants who caused injuries to them and robbed money, mobile and motorcycle etc. from him because due to injuries, he remained giddiness at that time and there was also dark. In cross-examination, he stated that no test identification parade was got conducted by the police. He has seen the accused present in the Court today first time. No recovery was effected from the accused-appellants by the police in his presence. He also stated that one assailants was wearing helmet while other two were without muffled faces.

Keeping in view the above statement of the injured-complainant, we find that the identity of the accused, who committed the murder and robbery etc. has not been established beyond doubt. PW-8 Subhash, another injured-eye witness has also stated in chief-examination that accused were not present in the Court on that day i.e. the day of his deposition. He further stated that he was summoned in CIA, Staff Bhiwani

on 24.04.2012 for identification of two accused, who had been arrested by

the police and on that day, S.P, Bhiwani was also present there and in his presence, he told to the police that the persons who had been arrested by the police, were not the assailants. This witness was got declared hostile regarding identification but nothing came in cross-examination. In cross-examination, PW-8 Subhash stated that he has seen the accused present in the Court and denied the suggestion that accused persons, present in the Court, are the same assailants, who had caused injuries to them.

Keeping in view the evidence of injured-complainant and injured-eye witness, who have not identified the accused, a reasonable doubt exists in the prosecution version. The prosecution has failed to prove the identity of the accused, who committed murder, robbery etc. beyond doubt. Mere fact that shirt of Rajesh @ Mota was found containing blood-stains or recovery of mobile, motorcycle in another case, alone are not sufficient to convict the accused-appellants under Sections 302, 394 and 412 IPC etc. A reasonable doubt exists in the prosecution version in view of the fact that material witnesses have not identified the accused. The benefit of doubt always goes in the favour of the accused. Therefore, by giving benefit of doubt, accused-appellants Sunil @ Shisha, Rajesh @ Mota and Krishan are acquitted of the charges for which they were convicted.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 29.11.2014, passed by learned Addl. Sessions Judge, Bhiwani, are not as per evidence and law and the same are set aside.

Therefore, finding merit in the appeal, the same is allowed.

Appellants No.2 and 3 namely Rajesh @ Mota and Krishan,

who are stated to be in custody, be set at liberty forthwith, if their custody is

not required in connection with any other case. The bail bonds/surety bonds of appellant No.1 are discharged.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

April 03, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No