

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

CRA-D No. 1185-DB of 2011 (O&M)

Reserved on : 28.2.2019

Date of decision : 5.3.2019

Ajam @ Billu and others

.... Appellant

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldeep Singh**

Present Mr. Sanjay Verma, Advocate, for the appellants.
Mr. Vishal Garg, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 7.10.2011 and order dated 10.10.2011 rendered by learned Additional Sessions Judge, Kurukshetra, in Sessions Case No. 65 of 2010, whereby accused Ajam alias Billu, Raju, Shanshah alais Arman, Shabeen, Salman alias Sonu and Jora alias Sonu were charged with and tried for the offence punishable under Sections 458, 460, 396, 506 IPC. They were convicted and sentenced under Section 396 IPC to undergo imprisonment for life and to pay fine of ₹ 1,000/- and in default of payment of fine, they were directed to further undergo simple imprisonment for three months. They were convicted and sentenced under Section 460 IPC to undergo rigorous imprisonment for a period of ten years and to pay fine of ₹ 1,000/- and in default of payment of

fine, they were directed to further undergo simple imprisonment for three months. They were convicted and sentenced under Section 506 IPC to undergo rigorous imprisonment for a period of six months. All the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 19.3.2010 PW7 Kirpal Singh lodged the complaint, Ex.P30, to the effect that they were four brothers and one sister. His sister was married and was residing in village Sandholi. They were residing in village Asmanpur for the last one year. On 18.3.2010 in the night, they were sleeping in a hut after taking their meal. His father Tara Chand was sleeping on a cot in front of his hut. At about 1.45 A.M., they heard the cries of his father. They all woke up immediately. They saw that three persons armed with *lathis*, *dandas* were standing near the cot. They threatened to kill them if they tried to take any action. Few of them were talking outside the hut. They were wearing *nikars* (shorts) and pants. They were having a torch. They were talking in local language. They searched the whole articles lying in the hut for half an hour. His brother Yashpal asked the assailants not to beat his father, then one of them gave a danda blow on his head. The assailants went away from the spot. Thereafter, they found their father lying in the pool of blood. Injured Yashpal and Tara Chand were removed to Mission Hospital, Pehowa, by Om Parkash in a car for treatment. Tara Chand was referred to PGI Chandigarh. He died. FIR was registered. Thereafter, investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section

313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Y. S. Bansal conducted the post-mortem examination on the body of Tara Chand on 20.3.2010. He proved Post-mortem report. He led his evidence by filing affidavit, Ex.P40. In his opinion, the cause of death was due to cranio-cerebral damage consequent to blunt trauma to head. All the injuries were ante-mortem in nature. The probable time lapsed between injury and death was around 1 day and between death and post-mortem examination was 7 hours.

7. PW12 Dr. Y. K. Gupta, Casualty Medical Officer, Saraswati Mission Hospital, Pehowa, had medico-legally examined Tara Chand. He had noticed the following injuries on his body:-

- “i) There is 3 lacerated wounds on left scalp size 4 cm to 3 cm, 6 cm x 2 cm scalp extending up to middle of scalp, bone deep, heavy bleeding present (Advised C.T. Scan).
- ii) There is profuse bleeding from mouth and nose.
- iii) The both eyes are swollen black in colour with slegish reaction of light. Pupil are dilated.”

8. PW1 SI Shadi Ram deposed that on 23.4.2010, he took all the six accused. They made disclosure statements in case FIR No. 74 dated

13.4.2010. Accused Billu alias Azam suffered disclosure statement to the effect that on the intervening night of 18/19.3.2010, he along with co-accused Salman alias Sonu, Raju, Shabeen, Sahanshah alias Arman and Jora alias Sonu caused injuries to the persons sleeping in the two deras situated in village Asmanpur and committed robbery of the currency notes and jewellery. His disclosure statement is Ex.P1. Thereafter, the other accused also made disclosure statements vide Ex.P2, Ex. P3, Ex. P4, Ex. P5 and Ex.P6. On 25.4.2010, he again interrogated the accused. They suffered separate disclosure statements, on the basis of which accused Jora Singh got recovered four pair anklets (*Pajaib*), which he had kept concealed in the *samshanghat* of village Arnecha. Accused Raju also made disclosure statement on the basis of which he got recovered one *mangalsutar* and *kangan*, which he had kept concealed near a *Peer Mazar* near canal of village Surmi-Arnecha. Accused Shabeen disclosed that he had kept concealed a *Tagri*, two silver *Guchhe* in the *samshanghat* of village Arnecha. Accused Sahanshah alias Arman disclosed that he had kept concealed two *hasali*. Accused Salman alias Sonu disclosed that he had kept concealed a gold *tikka* and a mobile. Accused Billu alias Azam disclosed that two ear rings and one mobile had been kept concealed by him and he could get the same recovered. The statements are Ex.P7 to Ex.P12. The articles were recovered as per the disclosure statements of the accused in the presence of Mukesh, Kirpal Singh and ASI Ishwar Singh. Kirpal Singh and Mukesh Kumar identified the jewellery.

9. PW5 SI Prem Singh deposed that the accused were interrogated by him in FIR No. 74 dated 13.4.2010.

10. PW6 ASI Ishwar Singh deposed that on 23.4.2010, all the accused were interrogated by SI Shadi Ram. Their initial statements are Ex.P1, Ex.P2, Ex.P3, Ex.P4, Ex.P5 and Ex.P6. Thereafter, all the accused suffered separate disclosure statements vide Ex.P7 to Ex.P12, on the basis of which articles were recovered.

11. PW7 Kirpal Singh is the eye-witness. On 18.3.2010, they had gone to sleep in the hut made in the farm after taking meal. His father Tara Chand was sleeping on a cot in front of the hut. At about 2.00 A.M., they heard cries of his father. They all wake up. They saw 3-4 persons standing in their hut. They were carrying *lathis* and sticks. They were wearing *nikars* and pants. They were having a torch with them. They threatened that if they tried to save, they would also be killed. Few persons were standing outside the hut. All the assailants were speaking local language. They kept searching the box and other articles lying in the hut for about half an hour. His brother Yashpal requested the assailants not to beat his father. On this, one of the assailants gave a *lathi* blow on his head. The assailants went away leaving the articles scattered. Thereafter, they got up and saw that his father was lying in a pool of blood. His father was taken by Om Parkash in his car to Mission Hospital, Pehowa. Thereafter, he was referred to PGI, Chandigarh. His statement is Ex.P30. In his presence, recoveries were made on 25.4.2010. These were taken into possession. In his cross-examination, he deposed that there was not complete darkness in the hut. Light was coming from outside. The accused remained in the hut for about half an hour.

12. PW8 Satbir Singh has also corroborated the statement of his brother PW7 Kirpal and disclosed the manner in which the incident had

taken place. He also deposed that his father was sleeping on a cot in front of his hut. He also heard his father's cries. His brother requested the assailants not to give injuries to his father. He was also given *danda* blow. In his cross-examination, he deposed that four assailants were present inside the hut and three assailants were standing outside the hut.

13. PW13 Inspector Yashwant deposed that he was posted as Inspector/ SHO of Police Station, Pehowa. He prepared the rough site plan, Ex.P45. During investigation, he came to know that the same incident had taken place at the agricultural farm of Gulshan Khatri. He also prepared rough site plan of place of occurrence of Farm House of Gulshan Khatri.

14. PW7 Kirpal Singh has corroborated the statement of PW8 Satbir Singh. PW7 Kirpal Singh categorically deposed that the appellants were carrying torch in their hand. The incident is witnessed by PW7 Kirpal Singh and PW8 Satbir Singh. They had identified the accused in the Court. The appellants had given beatings to their father and brother. His father died in PGI, Chandigarh. Yashpal was also given injuries on his head by the appellants. Sufficient light was available to recognise the assailants. The assailants have made disclosure statements on the basis of which recoveries were effected. Non-examination of Yashpal was not fatal to the prosecution case.

15. PW1 Dr. Y. S. Bansal, who conducted the post-mortem examination on the body of Tara Chand, opined that the cause of death was due to cranio-cerebral damage consequent to blunt trauma to head. The injuries were ante-mortem in nature. The probable time lapsed between injury and death was around 1 day and between death and post-mortem examination was 7 hours.

16. Test identification parade was not necessary since the appellants were recognised by PW7 Kirpal Singh and PW8 Satbir Singh. According to them, the appellants remained in hut for sufficient time. The appellants have not made any request for test identification parade.

17. Their Lordships of Hon'ble the Supreme Court in Raju Manjhi vs State of Bihar 2018 (5) R. C. R. (Criminal) 426, have held that failure to hold test identification parade would not make inadmissible evidence of identification in Court. Their Lordships have held as under:-

“14. As regards the claim of appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused —appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as to whether the investigation into the offence is proceeding in a right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case. It is evident from the confessional statement of the accused that at the time of occurrence he and another accused Rampati Manjhi were guarding outside the informant's house while other accused were committing dacoity inside. We do not think that there is any justification to the argument that as none of the prosecution witnesses could be able to identify the appellant, he cannot be termed as accused. In our view, such non-identification would not be fatal to the prosecution case in the

given facts and circumstances.

15. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration [See : Kanta Prashad v. Delhi Administration, 1958 CriLJ 698 and Vaikuntam Chandrappa and Ors. v. State of Andhra Pradesh, AIR 1960 SC 1340].”

18. The appellants had entered the hut of Tara Chand (deceased) to commit dacoity. They had murdered Tara Chand in the process of committing dacoity. Statements of PW7 Kirpal Singh and PW8 Satbir Singh are natural and inspire confidence. The recoveries have been made from the accused on the basis of their disclosure statements. PW7 Kirpal Singh and Mukesh Kumar identified the jewellery.

19. The prosecution has proved the case against the appellants beyond reasonable doubt. The trial court has correctly appreciated the evidence brought on record by the prosecution and found the accused guilty. No interference is called for in the well reasoned judgment and order recorded by the learned Court below. Accordingly, the appeal is dismissed.

20. Before parting with the order, we place our sincere gratitude to

the assistance rendered by Mr. Sanjay Verma, Advocate, who was appointed in the present case as Legal Aid counsel on behalf of appellant no.3, however, on our request, he also prepared and presented the case on behalf of other appellants also, as Mr. Devinder Bir Singh, who has filed the appeal and representing the appellants, was appointed in the office of Advocate General.

(Rajiv Sharma)
Judge

5.3.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No