

CRA-S-1959-SB-2004
CRA-S-1972-SB-2004

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

Date of decision: 05.12.2019

(I) CRA-S-1959-SB-2004 (O&M)

Manoj and another

...Petitioner

Versus

State of Haryana

...Respondent

(II) CRA-S-1972-SB-2004 (O&M)

Hari Om and another

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Suram Singh Rana, Advocate,
for the appellants in both the appeals.

Mr. Vikrant Pamboo, DAG, Haryana.

Jitendra Chauhan, J.

The captioned two appeals are being disposed of by this single judgment, having arisen out of impugned judgment of conviction and order of sentence dated 21/22.09.2004 (hereinafter referred to as the impugned judgment'), passed by learned Additional Sessions Judge (*ad hoc*), Faridabad (for short, 'the trial Court'), whereby, all the appellants have been

convicted and sentenced as under:-

Conviction	Sentence	Fine	Default stipulation
Section 365 IPC	RI for three years each	₹1,000/- each	RI for 03 months each
Section 394 IPC	RI for five years each	₹500/- each	RI for 01 month each

However, all the sentences were ordered to run concurrently.

Brief facts of the case, as noticed by learned trial Court, in paragraph No.2 of the impugned judgment, read thus:-

“2. This case was registered on the statement Ex.PA which Gurbachan Singh son of Mohan Singh resident of House No.619, Sector 28, Faridabad had made before SHO Delhi Cantt., New Delhi on 29.7.1998. Therein, he had alleged that on the above said date viz. 29.7.1998, he had left his house between 9.00-10.00 AM in his Maruti Car No.DL-6CD-2729 for going to Delhi. After covering a distance of 200 yards on link road when he had brought his vehicle on Mathura Road, a white coloured Maruti Car bearing No.DHB 6913 stopped in front of his car by overtaking the same. Four persons got out of that car and came running to his car. They had opened both the doors of his car and pushed him from his driver seat to the rear seat of the car. One of them who was wearing white Kurta-Paijama and was being called by the name of Hari Om got hold of the steering and started driving the car. Two of them had caught hold of him on the rear seat. He had tried his best to get himself released but with no success. When he had enquired from them as to what was the matter, then both the accused who were sitting on the rear seat held him more tightly. At that time the 4th person who was sitting on the seat by the side of the driver started giving fist blows to him. He had also removed his

turban. With one end of the turban his mouth was gagged while with the other end of the turban his feet were tied giving him an inkling that they would kill him and also throw him out of his Maruti Car. He had again made efforts to raise cries and get himself released and on which they started hurling filthy abuses of mother and sister. Both the accused who were sitting by his side made him lie on the seat and they then sat upon his body. They had also removed a sum of Rs.5000/- from his pocket. They had also snatched his cell phone No.9810133904. Whenever the vehicle stopped or slowed down near the red light they would again hold him very tightly on account of which he would become semi conscious. A short while thereafter a military man and a policeman were seen by him. They had stopped the car, brought him out of the same and untied the knots on his mouth, hands and feet. By that time, he had been full soaked in blood. He had further alleged in his complaint that the person who was driving the car was being called by others as Hari Om. The name of the person who was sitting by the side of the driver was Manoj and the other accused were having names of Arjun Shukla and Parmod.”

Charges under Sections 365, 394 and 397 of the Indian Penal Code were framed against the accused to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined HC Savitri Guleria as PW-1; HC Ramesh Kumar as PW-2; HC Tej Ram PW-3; SI Jaivir Singh as PW-4; Constable Umar Mohd. as PW-5; SI Juthar Singh as PW-6; Constable Swaran Singh as PW-7; SI Rajvir Singh, the Investigating

Officer as PW-8; Naik Manoj Dange as PW-9; UDC Narender, Safdarjung Hospital, Delhi as PW-10; SI Kishore Kumar as PW-11; and J.B. Bhardwaj as PW-12.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. All the accused took a plea that a dispute had arisen between the complainant and the finance company i.e. Apple Finance Ltd., financier of the car in question and on that count, a false case has been registered against them. However, the accused did not lead any evidence in defence.

After hearing learned counsel for the parties and appreciating the material produced on record, learned trial Court convicted and sentenced the accused-appellants as noticed at the outset of this judgment.

Hence, the instant appeal.

It is contended that the prosecution has failed to prove its case against the appellants inasmuch as neither the author of the FIR, i.e. the complainant-injured, nor the treating doctor was examined. Further, the case property, i.e. the car and cash amount of ₹5,000/-, was not produced before the trial Court. The questions with regard to carjacking and snatching of ₹5,000/- were not put to the accused during their examination under Section 313 Cr.P.C., therefore, such evidence could not have been read against them. The recovery of the car bearing No.DBH-6913 from the godown of Nanda Farm, which was allegedly left by the accused on the Mathura Road, is also highly improbable.

On the other hand, learned State counsel submits that all the appellants were apprehended by the Army Police and then handed over to

the Delhi Police, therefore, the question of false implication does not arise. The car of the complainant was recovered from the spot. The complainant was a tenant and shifted somewhere else after the incident, therefore, could not be examined.

Heard learned counsel for the parties and carefully perused the record.

There is no doubt with regard to the fact that the complainant-author of the FIR has not been examined in the instant case. Doubtlessly, it *prima facie* creates a dent in the prosecution story, however, it cannot be the sole ground for brushing aside the entire prosecution evidence. Moreso, the prosecution has been able to explain the circumstances due to which the complainant could not be examined. It has come on record that the complainant being tenant and had moved to some other place after the incident. Thus, summons could not be served upon him. Even otherwise, it is often witnessed that common man does not muster the courage to come to the courts and fight a legal battle against desperados.

The star witnesses in this case are PW-7 Constable Swaran Singh and PW-9 Naik Manoj Dange. It has come in the evidence of PW-7 that on 29.07.1998, he was posted at Pratap Gate in the area of Delhi Cantt. The police had put up barrier for stopping civil vehicles entering the Cantonment Area. All the appellants travelling in the Maruti Car were signalled to stop while trying to enter in the cantonment area but the driver did not pay any heed. This witness then asked PW-9 Manoj Dange, an Army personnel, who was also present there in connection with his official duty, to stop the vehicle. Accordingly, PW-9 put a barrier in front of the car

which forced the driver to stop. While in conversation with the driver of the car, appellant Hari Om, some one knocked from inside the car. When he had peeped inside, he noticed a person lying on the rear seat with his clothes blood-stained. He immediately caught hold of appellant-Hari Om. Meanwhile, rest of the accused also alighted from the car as also the complainant-Gurbachan Singh. All of them were taken to the Army Duty Room, from where the local police was informed. The testimony of PW-7, Swaran Singh is duly corroborated by PW-9, Manoj Dange. This witness also identified appellant Manoj in the Court. Both these witnesses cannot be said to have been nursing any grudge against the appellants and there was no reason for them to falsely implicate them. There is no such averment on behalf of the appellants either. Further, the testimony of PW-11, SI Kishore Kumar, who has proved lodging of 'Zero FIR' and PW-2 HC Ramesh Kumar, who received information at PCR that one Sikh Gentleman had been stopped by some miscreants for the purposes of kidnapping him, lend credence to the prosecution story. Thus, the offence under Section 365 IPC for having kidnapped/abducted the complainant and putting him in wrongful confinement stands fully proved.

Now, this Court would delve upon the aspect as to whether the offence of robbery is made out against the appellants or not. In this connection, the statements of the appellants under Section 313 Cr.P.C. attain importance. The appellants have pleaded that there was a dispute between the complainant and Apple Finance Co. Ltd., financier of the car of the complainant. This shows that when the complainant had failed to clear the instalments, the appellants acting as agents of the financier had taken the

possession of the car from the complainant. It has also come on record that the accused had abducted the complainant when he had merely covered a distance of 200 yards from his house while on way to Delhi.

Hon'ble the Supreme Court of India in **Anup Sharma Vs Bhola Nath Sharma, (2013) 1 SCC 400** has observed as under:-

"(5) In K. A. Mathai Vs. Kora Bibblikutti this Court had taken a similar view holding that in case of default to make payment of installment the financier had a right to resume possession even if the hire-purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertion of rights and obligations accruing to the parties under the hire-purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that the financier had resumed the possession of the vehicle with a guilty intention.

(6) In Charanjit Singh Chadha V. Sudhir Mehra, this Court held that recovery of possession of the vehicle by the financier owner as per terms of the hirepurchase agreement, does not amount to a criminal offence. Such an agreement in an executory contract of sale conferring no right in rem on the hirer until the transfer of the property to him has been fulfilled and in case the default is committed by the hirer and possession of the vehicle is resumed by the financier, it does not constitute any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the Agreement.xxx (7) In view of the

above, the law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case of vehicle is seized by the financier, no criminal action can be taken against him as he is repossessing the goods owned by him."

In the present case, in their effort to repossess the vehicle, the accused persons, though caused hurt and wrongful restraint or attempted to cause hurt or wrongful restraint in order to repossess the vehicle, but they were otherwise within their rights to repossess the vehicle as per the terms and conditions of Hire-Purchase agreement. Even if the accused did not follow the procedure, it would not constitute criminal offence punishable under Section 394 IPC. Therefore, this court is of the opinion that the offence under Section 394 IPC is not made out against the appellants and hence, acquitted thereunder.

Now coming to the quantum of punishment, keeping in view the facts that the appellants have suffered the agony of protracted trial and the complainant did not come forward to pursue his case, this Court is inclined to take a lenient view. The sentence of imprisonment is reduced from RI for three years to the period already undergone under Section 365 IPC. However, the same shall be subject to deposit of enhanced fine of Rupees twenty five thousand each, over and above the fine already imposed by the trial Court, with the PGIMER Chandigarh's Poor Patient Welfare Fund, within a period of three months from the date of receipt of a certified copy of this judgment, failing which the instant appeal shall be deemed to

have been dismissed. The appellants are stated to be on bail. Their bail bonds shall stand discharged consequent upon submission of proof of deposit of enhanced fine.

Partly allowed.

(JITENDRA CHAUHAN)
JUDGE

05.12.2019
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No