

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2547-SB-2004 (O&M)
Date of decision: 22.02.2019

Jain Deen and anr. ... Appellants

versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Ms. Anju Arora, Advocate
for the appellants.

Mr. Vikramjit Singh, Addl. AG, Haryana.

Manjari Nehru Kaul, J.

This appeal is directed against the judgment of conviction and order of sentence dated 12.10.2004 passed by learned Addl. Sessions Judge, Yamuna Nagar, Jagadhri wherein the following accused were convicted and sentenced as under:

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
1	Jaindeen	395/397 IPC	Rigorous imprisonment (RI) for 07 years	₹ 1,000/-	RI for 01 year
2	Yaseen @ Shankar	395/397 IPC	RI for 07 years	₹ 1,000/-	RI for 01 year
3	Jahid	412 IPC	RI for 05 years	₹ 500/- each	RI for 09 months
4	Ikrar	412 IPC	RI for 05 years	₹ 500/- each	RI for 09 months

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
5	Rajesh @ Safeli	412 IPC	RI for 05 years	₹ 500/- each	RI for 09 months
6	Shakil @ Sangeen	412 IPC	RI for 05 years	₹ 500/- each	RI for 09 months
7	Israr @ Kavi Raj @ Rabbi Khan	412 IPC	RI for 05 years	₹ 500/- each	RI for 09 months

The instant appeal has however been filed by only two accused namely Jain deen and Yasin @ Shankar out of the above seven accused, who were convicted by the learned trial Court.

2. The prosecution case was set in motion on the statement Ex.PO of complainant Mewa Singh in whose house a dacoity was committed on the intervening night of 23/24 December 1999. The complainant Mewa Singh PW-7 was brought to Sharma Hospital, Jagadhari in an injured condition soon after the occurrence. In his statement Ex.PO recorded by PW-14 SI Lal Singh, complainant Mewa Singh stated that at about 1.00 am when he along with his family members was sleeping in their house, he was suddenly awakened and he saw his wife Harbans Kaur being inflicted injuries with a wooden log by an assailant, who was accompanied by two other men standing near the door of his room. The assailants removed the wrist watch of the complainant and a gold ring besides ransacking an almirah, which was in his room. The complainant-Mewa Singh somehow managed to escape from his room and on rushing out raised an alarm, which attracted his neighbour PW-1 Devender Singh Saini and others. PW-1

Devender Singh Saini fired two shots from his licensed gun in the air but the assailants managed to flee from the spot. The complainant Mewa Singh stated that after the assailants had fled, he heard the cries of his daughter-in-law Ranish Kaur PW-8 and grand son Harminder Singh, who were sleeping in another portion of their house and it was then, he realized that they too had been attacked and injured by assailants in the occurrence. The complainant further stated that at that point of time he was not in a position to give details about the articles taken away by the assailants from his house and would be in a position to do so later on. In pursuance to his statement, formal FIR Ex.PO/2 under Sections 458/380 IPC was registered against the assailants. During the investigation, all the accused were arrested.

3. After investigation, final report was filed and charges were framed under Sections 395/397 and 412 IPC to which the accused pleaded not guilty and claimed trial.

4. In order to prove the case of the prosecution, prosecution examined as many as twenty one witnesses. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.PC wherein they pleaded false implication.

5. The learned trial Court vide impugned judgment dated 12.10.2004 found accused-appellants guilty for the offence under Sections 395/397 IPC. The other five accused were however, found guilty only for the offence under Section 412 IPC. All the accused were sentenced to undergo the rigorous imprisonment as already detailed above.

6. Learned counsel for the appellants has primarily challenged the impugned judgment passed by the learned trial Court on the following

grounds:

- i) In the absence of any Test Identification Parade, the trial Court was in error in recording a finding of conviction against the appellants only on the basis of their identification by the complainant and that too in the Court for the first time after a gap of four years from the date of occurrence.
- ii) Injured witness PW-8 Ranish Kaur did not support the case of the prosecution and failed to identify the appellants.
- iii) There were material contradictions appearing in the deposition of the PW-7 complainant Mewa Singh and PW-1 - Devender Singh Saini, which cast a shadow of doubt on the case of the prosecution.
- iv) The recovery of stolen articles was doubtful inasmuch as the recovery witnesses did not support the same.

7. Learned State counsel, on the other hand, vehemently argued that both the appellants were identified by the complainant Mewa Singh in Court coupled with the fact that clothes Ex.P-7, P-8 and P-11 to P-14 were recovered from the appellants, which were identified by PW-7 complainant and PW-9 Ashpal Singh. He further submitted that there was no occasion for the complainant to falsely implicate the accused-appellants in the instant case and prayed for dismissal of the present appeal.

8. I have given my anxious consideration to the arguments addressed by the learned counsel for the parties as also the evidence and other material on record.

9. Admittedly, the complainant identified the appellants in the

Court for the first time after almost four years of the occurrence. The complainant while identifying the appellants was emphatic that it was these two persons, who were standing at the gate of his house when the third assailant was inflicting injuries on him and his wife. Further, the complainant also deposed that these two assailants along with a third one ransacked the almirah and took away the articles from their house. Had there been some doubt about the ability of the complainant to see the assailants during the occurrence then of course a question mark could have been raised qua their identification in the Court for the first time but in the case in hand, it cannot be said that the complainant just had a fleeting glimpse of the appellants. In fact, he got ample time and opportunity to see them from a close distance during the occurrence which would have definitely enabled him to register their physical features.

10. Moreover, it has come in the deposition of PW-20 Rakesh Singh, JMIC, Sonapat that an application Ex.PDD was moved for Test Identification Parade of the appellants but vide Ex.PDD-1 they expressed their unwillingness to participate in the Test Identification Parade. Once they declined Test Identification Parade of their own volition, then the evidentiary value of their identification in the Court by the complainant would not be detracted by urging that it was inherently a weak type of evidence.

11. No doubt, PW-8 injured Ranish Kaur did not support the case of the prosecution and was declared hostile but a perusal of the evidence on record reveals that it was not PW-8 Ranish Kaur, who had a chance to see the present appellants but PW-7 complainant Mewa Singh. PW-8 Ranish

Kaur was sleeping in another portion of the house during the occurrence and the probability of her having been attacked by other members of the gang while in sleep, cannot be ruled out. The occurrence seemingly lasted for a short duration and the attack was carried out almost simultaneously. Hence, it was but natural for her to be unable to identify the appellants. However, the complainant corroborated his statement Ex.PO, that he would be in a position to identify the accused if brought before him and the fact remains that he did identify the accused-appellants in Court. It was not the case of the prosecution much less the case of PW-8 Ranish Kaur that the same assailants who had assaulted the complainant PW-7 Mewa Singh had also assaulted her. Hence, in this background, if Ranish Kaur -PW-8 was unable to identify these two appellants it could not be said to shatter the case of the prosecution.

12. Coming to the contradictions pointed out by learned counsel for the appellants between the testimonies of PW-7 complainant Mewa Singh and PW-1 Devender Singh Saini, I do not find the same as being so material so as to create any dent in the case of the prosecution. PW-1 Devender Singh Saini has in fact corroborated the testimony of PW-7 complainant Mewa Singh on all material aspects of the case. Minor discrepancies are bound to occur even in the testimonies of the most truthful of all witnesses. Witnesses are after all human beings and not computers. The fact of the matter remains that soon after the occurrence PW-1 Devender Singh Saini had indeed accompanied PW-7 complainant Mewa Singh and fired in the air. PW-1 Devender Singh Saini corroborated this version of the complainant.

13. Another challenge qua the recovery witness having not supported the case of the prosecution is also meritless. It cannot be disputed that a dacoity did take place in the house of the complainant, he and other members of his family did suffer injuries in the occurrence and importantly, complainant identified the appellants. It would be worthwhile to notice that though PW-8 Ranish Kaur was declared hostile by the prosecution but in her cross-examination, she admitted her signatures on the disclosure statement in pursuance to which the recovery of articles were effected from the appellants.

14. In the light of the aforementioned discussion, I do not find any merit in this appeal. The same is accordingly dismissed. The impugned judgment of conviction and order of sentence dated 12.10.2004 is maintained. The accused-appellant, who is on bail, his bail bonds/surety bonds stands cancelled. Necessary steps be taken to secure his custody.

22.02.2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No

