

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

CRA-D-923-DB-2016 (O&M)
Reserved on : July 24, 2019
Date of Decision: September 09, 2019

Tarif @ Ghora ...Appellant

Versus

State of Haryana ...Respondent

AND

2. CRA-S-3584-SB-2016 (O&M)

Mubeen @ Kala and another ...Appellants

Versus

State of Haryana ...Respondent

AND

3. CRA-S-3752-SB-2016 (O&M)

Sakeel ...Appellant

Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. B.R.Vohra, Advocate for the appellants
in CRA-S-3584-SB-2016.

None for the appellant in
CRA-D-923-DB-2016.

None for the appellant in
CRA-S-3752-SB-2016.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. Since common questions of law and facts are involved in the aforesaid three appeals these are taken up together and disposed of by a common judgment.

2. The appeals have been filed by the appellants against their conviction and sentence vide judgment and order dated 02.09.2016 of the learned Sessions Judge, Mewat in Sessions case No.51 of 2016 whereby they were charged with and tried for offences punishable under Sections 379-A, 506 and 34 of the Indian Penal Code (in short 'IPC'). Vide order dated 23.08.2016, the Trial Court amended the charge from Section 379-A(1) to Section 379-B IPC. The appellants were convicted under Section 379-B read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/-, each, and in default of payment fine, to undergo simple imprisonment for three months. They were also convicted under Section 506 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of four months.

3. Criminal Appeal No.CRA-D-923-DB-2016 has been filed by Tarif @ Ghora, CRA-S-3584-SB-2016 by Mubeen @ Kala and Asfak, while CRA-S-3752-SB-2016 has been filed by Sakeel.

4. The case of the prosecution in a nutshell is that complainant Salim submitted a complaint Ex.PW1/A to the S. P. District Mewat. In the complaint he stated that he was working as Munshi at Gaurav Bhatta (brick kiln). On 21/22.03.2016 at about 2.30 AM, six unknown persons came to the Bhatta (brick-kiln) in a white coloured Bolero Vehicle. They started scattering papers kept in the

Chowkidar. They snatched Rs.6,000/- from the pocket of the complainant and fled from the spot. While going back they threatened to kill him if the incident was narrated to anyone. The complainant alleged that he had made a phone call at Police Control Room No.100 but no action was taken. He requested that strict action be taken.

5. On receipt of the said complaint which was sent to SHO P.S. Nuh for necessary action, FIR Ex.PW4/A dated 22.03.2016 u/s 379A, 506 and 34 IPC was registered.

6. The accused were arrested. After completion of investigation challan was presented against the accused.

7. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations levelled against them and pleaded innocence. However, they did not lead any evidence in their defence.

8. The appellants were convicted and sentenced as referred to above. Hence, these appeals.

9. We have heard learned counsel for the parties and have gone through the judgment and record.

10. PW1 Mohammad Salim son of Khursheed (complainant) stated that he has been working as Clerk at Gaurav Brick Kiln, Aldoka for the last two years. On 22.03.2016 at about 02:30 hours, 4-5 persons came to the office of Gaurav Brick Kiln. At that time he was sleeping. Those assailants gave beatings to him and watchman named Bahadur. They snatched ₹6,000/- from him. He identified the accused present in the Court as being the assailants who gave beatings to him

and also snatched ₹6,000/- from him. The accused persons also threatened him that if he disclosed about the incident to anyone he would be killed. He informed the police. He moved application/complaint Ex.PW1/A to the police which bears his signatures. The accused also snatched his mobile phone make 'Lava' and the same was got identified from him by the police. He proved his signatures on recovery memo of mobile phone as well as memo of identification, Ex.PW1/B.

11. In cross examination, he stated that he did not know the accused before the day of the occurrence. He stated that it was dark when the assailants assaulted him but he had been able to recognize them as they had beaten him. He stated that after the occurrence he had seen the accused for the first time in Court. He stated that Bahadur worked as a watchman at the brick kiln. He was a resident of Bihar. His other details were not known. He had gone to Bihar and was not employed in the brick kiln at present. He stated that call was made to the Police Control Room from the mobile phone of another Clerk (Munshi) Ranbir. He stated that he got himself treated from Murad Hospital, Nuh which is a private hospital. Police had not got conducted his medico-legal examination. In his further cross examination he stated that he had received 2-3 injuries which were not external. The Watchman Bahadur had received 4-5 lathi blows on his back. The watchman also did not get himself medico-legally examined. He stated that one or two assailants held out threat to his life but he could not say as to who out of the accused did so. He also could not tell who out of the accused had taken out money from his pocket. He explained in such an incident it is not possible to point it out.

12. PW2 Vijay Singh stated that on 30.06.2016, on the request of Rajbir Singh Sub-Inspector, Police Station Nuh, he visited the spot and prepared the

13. PW3 Inspector Sanjay Kumar deposed that on 30.06.2016 while he was posted as Inspector/SHO at Police Station Nuh, on completion of investigation he prepared report under Section 173 of the Code of Criminal Procedure, 1973.

14. PW4 Sub Inspector Deep Chand deposed about receipt of a written intimation/application Ex.PW1/A of complainant Saleem from the office of Superintendent of Police, Mewat on 22.03.2016 based whereon he recorded FIR Ex.PW4/A.

15. PW5 Constable Nafeesh Ahmed stated that on 20.06.2016, he was posted at Police Station Nuh. On that day, he was associated with Sub-Inspector Rajbir Singh. Accused Tarif alias Ghora was arrested from bus stand Nuh. On interrogation he suffered disclosure statement Ex.PW5/A and got demarcated the place of occurrence vide memo of demarcation Ex.PW5/B. He identified accused Tarif alias Ghora in Court.

16. PW6 Constable Mohammed Akram stated that on 27.06.2016 he was posted at Police Station Nuh. On that day, he was associated with Sub-Inspector Rajbir Singh. Accused Sakeel and Mubeen were joined in the investigation of this case with permission of the Court on production warrant. On interrogation they suffered disclosure statements Ex.PW6/A and Ex.PW6/B respectively and got demarcated the place of occurrence vide memos of demarcation Ex.PW6/C and Ex.PW6/D respectively. He identified the said accused in Court.

17. PW7 Head Constable Ashok Kumar stated that on 01.04.2016, he was posted at Police Station Nuh. On that day he was associated with Assistant-Sub-Inspector Bhagwat Prashad. Accused Asfak was joined in the investigation of this case in the Police Station Nuh. On interrogation, he suffered disclosure statement

demarcation Ex.PW7/B. In pursuance of disclosure statement he also got recovered one mobile phone make 'Lava', Ex.P1 from underneath the bridge, Nuh-Adbar road, which was taken into police possession vide recovery memo Ex.PW1/B. He identified accused Asfak in Court.

18. PW8 Assistant Sub Inspector Attar Singh deposed that he had arrested accused Asfak on 31.03.2016 in the case FIR No.165 dated 22.03.2016 for offences punishable under Sections 395 and 397 IPC and Section 25 of the Arms Act, 1959. During interrogation on 01.04.2016 he along with his co-accused admitted their involvement in the present case as well as in other cases and suffered disclosure statement Ex.PW8/A. He identified accused Asfak in Court.

19. PW9 Head Constable Raj Kumar then MHC P.S. Nuh, deposed about the deposit of case property i.e. one stapled envelope containing one mobile phone, with him by Assistant Sub Inspector Bhagwat Prashad on 01.04.2016.

20. PW10 Assistant Sub-Inspector Bhagwat Prashad stated that on 22.03.2016, he was posted at Police Station Nuh. On that day the investigation of this case was entrusted to him. He reached the spot and prepared rough site plan Ex.PW10/A of the place of occurrence. On 01.04.2016, accused Asfak who was in police custody in the case FIR No.165 of 22.03.2016 under Sections 395 and 397 of the Indian Penal Code, 1860 was joined in investigation of the case. During interrogation he suffered disclosure statement Ex.PW7/A. He got demarcated the place of occurrence vide memo of demarcation Ex.PW7/B. He also got recovered one mobile phone make 'Lava', Ex.P1, from underneath the bridge at Nuh-Adbar road. The mobile phone was identified by the complainant. He deposited the case property with the M.H.C. of Police Station Nuh. He identified accused Asfak in

21. In his cross examination, he stated that the complainant had not mentioned about the factum of the mobile phone in his complaint but he had told him about it during investigation on 22.03.2016. He, however, did not remember if any supplementary statement of the complainant was recorded by him.

22. PW11 Sub-Inspector Rajbir Singh stated that on 20.06.2016 he was posted at Police Station Nuh. On that day, he and Constable Nafees Ahmed, joined accused Tarif alias Ghora who was already in the police custody in the case FIR No.165 of 2016 under Sections 395 and 397 IPC in investigation of this case. On interrogation he suffered disclosure statement Ex.PW5/A. He got demarcated the place of occurrence vide memo of demarcation Ex.PW5/B.

23. On 27.06.2016, he and Constable Mohammed Akram joined accused Sakeel and Mubeen in the investigation of this case with permission of the Court, after obtaining their custody, on production warrant. On interrogation they suffered disclosure statements. They got demarcated the place of occurrence vide memos of demarcation Ex.PW6/C and Ex.PW6/D respectively.

24. What emerges from the evidence is that complainant Salim submitted a complaint Ex.PW1/A to the S. P. District Mewat alleging that he was working as Munshi at Gaurav Bhatta (Brick Kiln). On 21.03.2016 at about 2.30 AM six unknown persons came to the Bhatta in a white coloured Bolero Vehicle. They started scattering papers kept in the office. Thereafter, they searched the pockets of the complainant and the chowkidar. They snatched Rs.6,000/- from the pocket of the complainant and fled from the spot. While going back they threatened to kill if the incident was narrated to anyone. The complainant made a phone call to Police Control Room No.100 but no action was taken. He then submitted the complaint

Based whereon the FIR was registered.

25. The accused were not named in the FIR as they were not known to the complainant. It has come in evidence that they were already arrested in another case FIR No.165 dated 22.03.2016 under Sections 395 and 397 IPC and Section 25 of the Arms Act. They were joined in investigation of this case. During interrogation they admitted to their involvement in this case as well. They suffered disclosure statements and got demarcated the place of occurrence. On the disclosure statement of accused Asfak a mobile phone make 'Lava' was got recovered by him from underneath the bridge at Nuh-Adbar road. The mobile phone was identified by the complainant. The complainant also identified the accused in Court as being the ones who had come to the Brick Kiln.

26. Thus, the only evidence against the accused is their identification by PW1 Salim- the complainant in Court and the recovery of the mobile phone make 'Lava' on the disclosure statement of accused Asfak which has been identified by the complainant as being the one which had been snatched from him.

27. The question is whether this evidence is sufficient to prove the case against the accused beyond reasonable doubt?

28. Admittedly, the accused were not known to the complainant. He had not seen them before the date of the incident. He also stated that after the incident he had seen them for the first time in Court. The incident occurred at 02:30 hours on 22.03.2016. In his cross examination PW 1- the complainant admitted that it was dark when the assailants assaulted him. He stated that he was able to recognize them as they had beaten him. It is significant that in his complaint EX.PW1/A he had not mentioned about any beating administered to him or the chowkidar Bahadur by the assailants. He had only stated that they scattered the papers and thereafter they searched the pockets of the complainant and the

chowkidar. They snatched Rs.6,000/- from the pocket of the complainant and fled from the spot. It appears that the allegation of him and the chowkidar having been beaten by the assailants is a subsequent embellishment to strengthen his case regarding recognition of the accused. In his deposition he stated that the owner of the brick kiln had taken him for treatment to Murad Hospital, Nuh. However, neither was the owner examined nor any record of the hospital produced. Thus, it is not proved that the assailants had beaten the complainant.

29. What appears from the evidence is that the assailants came, scattered the papers kept in the office looking for money or other valuables, hurriedly searched the pockets of the complainant and the watchman and quickly ran away with Rs.6000/- they found in the pocket of PW 1. It would be unsafe to assume that the complainant would be so alert as to be able to recognize the accused in the dark and also identify and recognize them about four months after the incident in Court (his deposition was recorded in Court on 30th July, 2016).

30. If the chowkidar Bahadur who also was a victim and was present there had been examined and he also had identified the accused it may have lent some support to the prosecution case. But he was not examined. PW1 stated that he had gone back to Bihar and was no longer employed at the brick kiln.

31. There is another flaw in the case. In his complaint there is no mention that the assailants had snatched the mobile phone of the complainant. It is for the first time in his deposition in Court that the complainant mentioned that they had snatched his mobile phone make 'LAVA'. PW10 ASI Bhagwat Parshad in his cross examination admitted that the complainant had not mentioned about the factum of the mobile phone in his complaint but he had told him about it during

investigation on 22.03.2016. He, however, did not remember if any supplementary

statement of the complainant was recorded by him. Other than its identification by PW1, there is nothing on record to indicate that the mobile phone belonged to PW1. This also appears to be an afterthought to try to connect the accused with the crime.

32. Thus, it has to be held that the prosecution has not been able to prove the case against the accused beyond reasonable doubt.

33. Accordingly, the appeals are allowed. The appellants are acquitted of all the charges framed against them by giving them benefit of doubt. Appellant Tarif @ Ghora is in custody. He be released forthwith, if not required in any other case. The sentence of appellants Mubeen @ Kala, Asfak and Sakeel were suspended vide orders dated 29.10.2018. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 09, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No