

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

Date of decision : 07.02.2020

(I) CRA-D-937-DB-2014 (O&M)

Ikrar and others

...Appellants

Versus

State of Haryana

...Respondent

(II) CRA-D-809-DB-2014 (O&M)

Mehfuj and another

...Appellants

Versus

State of Haryana

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Amandeep Singh Rai, Advocate,
for the appellant(s) in CRA-D-937-DB-2014.

Ms. Shalini Attri and Ms. Apporva, Advocate,
for the appellant(s) in CRA-D-809-2014.

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

The captioned two appeals are being disposed of by this single
judgment, having arisen out of the common impugned judgment and order

dated 18.04.2014 passed by learned Additional Sessions Judge, Panipat (hereinafter referred to as 'the trial Court') whereby, the accused-appellants stand convicted under Sections 395 of the Indian Penal Code (in short, 'the IPC'), and sentenced to undergo imprisonment for life along with fine of ₹5,000/- each with default stipulation.

Brief facts of the present case as noticed in para No.2 of the judgment passed by the trial Court are as under:-

“The prosecution allegations as culled out from the report under Section 173(2) Cr.P.C. are that on 23.01.2012, Satpal Singh son of Ram Bhaj, came to Police Station and moved complaint to the effect that yesterday on 22.01.2012, as usual, he along with his wife, daughter Nisha aged 17 years, son Deepak aged 13 years and son Ritik aged 11 years were preparing to sleep and at about 12.30 midnight, he along with his wife Sudesh were watching television and the children fell asleep. The door of the room was closed, but it was not bolted from inside. In the meantime, four young boys who were in muffled faces, entered in their room. Out of them, two boys who were in muffled faces, entered in their room. Out of them, two boys were having pistols and the remaining two were also having something like weapon. Two more boys were seen while standing outside their room having iron rods in their hands. The four boys who entered in their room asked them to hand over the same what they were having. In the meantime, their children woke up. They tied his hand on his back with a cloth. They threatened

them not to raise alarm otherwise they will shoot them. One of the boy who was holding a pistol, pointed the pistol on his temporal, whereas another boy having pistol pointed the pistol on the temporal of his wife. They snatched ear rings of gold from the ear of his wife and gave slaps to him and his wife. Remaining two boys searched the trunk and bed and took away four nose pins of gold, a pair of Pajeb of silver and cash amount of Rs.5,000/- from the bed. Thereafter, those persons confined all of them in the room and bolted the room from outside. They also took out the battery of their mobile phone and threatened them not to raise alarm otherwise, they broke the Roshandan (space through which air comes inside the room) and his younger son Ritik managed to come out and opened the door from outside. Thereafter, they called the owner of the Dera namely Tara Chand Gaba and other persons. It has been further averred that two boys were talking in Punjabi language, whereas the other two boys were talking in local language. The boy who was talking in Punjabi language and was having a pistol, seems to be one-eyed person and his eyes were swallowed and he was of whitish colour and having a good physic of the height 5 ft. 8 inches. All the boys were of the age of 25/30 years. Two of them were having good physic, whereas remaining two were having light physic. All the aforesaid six assailants in conspiracy with each other had committed dacoity in his home. It has been further averred that he came to know that the abovesaid assailants committed dacoity upon Pappu son of Lala

Ram and Mohar Pal son of Rambir, tenants in the rooms situated in the fields of village Kabri of Joginder Cheema and Surender son of Bindeshar, living in the tubewell kotha of the field of A.M.B.I. Company. He alongwith Pappu, Mohar Pal and Surender as well as other residents of colony were trying to know about the whereabouts of the assailants, but till the time, they could not get in clue. He prayed for taking legal action in the matter.”

After completion of investigation and upon presentation of *challan*, all the accused were charge-sheeted for the offences punishable under Sections 395 & 397 IPC, whereas, accused-appellants Kaum, Yusaf and Mehfooj under Section 25 of the Arms Act as well, to which all the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution has examined Sudesh wife of Satpal as PW-1; Satpal son of Ram Bhaj, complainant as PW-2; Mahender Singh Patwari as PW-3; Satbir Singh Patwari as PW-4; EASI Jai Bhagwan as PW-5; ASI Devender Kumar as PW-6; SI Rameshwar Dutt as PW-7; Pappu as PW-8; Mohar Pal as PW-9; SI Bhim Sain as PW-10; SI Bijender Singh as PW-11; and SI Har Narain as PW-12. PWs HC Angrez, Criminal Ahlmad in the Court of learned CJM, Panipat, ASI Ram Kumar, Surender and Inspector Yogesh Kumar were given up being unnecessary.

Thereafter, statements of the accused under Section 313 Cr.P.C were recorded and entire incriminating circumstances appearing in the

prosecution evidence were put to the accused to which they denied and pleaded false implication. In defence, they examined Ayub son of Munshi as DW-1.

After considering the entire facts and circumstances of the case and appreciating the evidence brought on record, learned trial Court convicted and sentenced all accused-appellants as narrated at the outset of this judgment.

Hence, the instant appeals.

Learned counsel contends that the identity of the accused has not been proved in this case. The only evidence against the accused-appellants is the disclosure statement suffered by them in FIR No.145 dated 02.02.2012 registered under Sections 399 and 402 IPC and Section 25 of the Arms Act, at P.S. City Panipat, which were exhibited as Ex.PE to Ex.PK, with the record of the said case. No independent witness was joined at the time of recording of the alleged disclosure statements in the present case. Similarly, no independent witness was joined at the time of effecting recovery of the alleged weapons of offence.

Learned State counsel while opposing the instant appeals has submitted that the prosecution has been successful in bringing home guilt of the accused-appellants.

Heard.

It is the case of the prosecution that the accused persons had barged into the house of the complainant and committed dacoity. All the

accused were having muffled faces. Therefore, neither the complainant nor any member of his family could identify them at the time of the alleged occurrence. The only lead which could be provided is that one of the assailants was a one-eyed person. While stepping into the witness-box, complainant Satpal, PW2, has stated that the assailants were with muffled face, whereas, PW-1, Sudesh wife of the complainant has made tentative identification of the appellants. No test identification parade was conducted either. Thus, it would be safe to conclude that the identification of the accused has not been sufficiently proved in this case.

The only evidence which has come against the appellants is the alleged disclosure statements suffered by them in some other case i.e. FIR No.145 (ibid). The original record of the said case was never summoned to prove the said disclosure statements. Even otherwise, all the appellants stood acquitted in FIR No.145 (ibid). Similarly, there is no independent witness of the recovery memos Exs.PS/1, PS/4, PS/7, PS/10, PS/13 and PS/16. No other cogent evidence has come on record against the accused/appellants to fasten them with criminal liability. Moreover, charge under Section 25 of the Arms Act has also not been proved before the trial Court.

In view of the above, this Court feels that the prosecution has failed to establish guilt of the accused beyond a shadow of reasonable doubt. Accordingly, the instant appeals are accepted; the impugned judgment of conviction and order of sentence dated 18.04.2014 passed by the trial Court

are set aside; and the appellants are acquitted of the charges framed against them by extending benefit of doubt. The appellants are stated to be in custody. They be released forthwith, if not required in any other case.

Appeals allowed.

A photocopy of this judgment be placed on the connected file.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

07.02.2020

atulsethi

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No