

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

CRA-S-541-2020 (O&M)
Date of decision : 21.10.2020

Harjit Singh @ Harry

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Kanwaljeet Singh Derrabassi, Advocate for the appellant.
Ms. Samina Dhir, Deputy Advocate General, Punjab.

ANIL KSHETARPAL, J.

Through this appeal, the appellant-Harjeet Singh @ Harry has questioned the correctness of the judgment dated 20.01.2020 passed by the Additional Sessions Judge, SAS Nagar, Mohali in FIR No.17 dated 05.02.2014 convicting him under Sections 458, 395, 398 & 201 of the Indian Penal Code, 1860.

The order of sentence qua the appellant reads as under:-

<i>Name of convicts</i>	<i>Section of Conviction</i>	<i>Sentence of Imprisonment</i>
Harjit Singh	Under Section 458 IPC	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.10000/- each. In default of payment of fine, to further undergo imprisonment for a period of five months.

Harjit Singh	Under Section 395 IPC	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5000/- each. In default of payment of fine, to further undergo imprisonment for a period of three months.
Harjit Singh	Under Section 398 IPC	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.5000/- each. In default of payment of fine, to further undergo imprisonment for a period of three months.
Harjit Singh	Under Section 201 IPC	To undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2000/- each. In default of payment of fine, to further undergo imprisonment for a period of two months.

This Court has heard the arguments of learned counsel for the appellant as also Ms. Samina Dhir, Deputy Advocate General Punjab and with their able assistance gone through the paper book as well as the record requisitioned.

The case of the prosecution has been noticed by the learned Additional Sessions Judge in para 2 and 3 of its judgment, which are extracted as under:-

“2. The prosecution story in a nut-shell is that on 5.02.2014, Sub Inspector Navin Pal, SHO, Police Station Mataur alongwith ASI Bakshish Singh, C. Manpreet Singh was on patrolling duty on government vehicle No. PB-23-G-5022 driven by C. Amandeep Singh and ASI Jasmer Singh alongwith H.C.Gurmit Singh, H.S. Sanjay Kumar and C. Sukdev Singh was also on patrolling duty on private vehicle. In the meantime, an information was received on telephone that some armed persons entered into Kothi No.123, Phase 3B1, SAS Nagar where they confined a family and

committed decoity. SI Navin Pal alongwith other members of the police party went to Kothi No.123, Phase 3B1, SAS Nagar where Rajiv Kumar complainant met him and got recorded his statement. In his statement he alleged that he is a property dealer by profession. He was sleeping in his house with family. At about 10:50 p.m. six persons armed with weapons entered into his house. Two persons were carrying pistols. Two persons were carrying sharp edged weapons and two other persons were having sharp edged weapons like cutter. They first entered into the room of their maid servant Poonam. Then they went to the room of Sandeep on first floor of the house who is working with him where scuffle took place and caused injuries to Sandeep on his right arm with sharp edged weapon. Thereafter they tied Sandeep with help of rope. Thereafter they went to the room of Karan son of the complainant and woke him up and thereafter on gun point they took him to the room of the complainant and knocked the door. The wife of the complainant namely Seema opened the door and thereafter they entered into the room. The wife of the complainant raised an alarm. Thereafter they also bring Poonam and Sandeep to their room where they threatened them on gun point and also gave blow of butt of the pistol on the head of the complainant and also gave fist blows to the members of the family and asked for valuables and cash in the house. About Rs. 4000/- was lying in the house which they handed over to the accused. Thereafter, they took keys of the almirah lying in the store and after opening the same, they take away articles of gold, diamond. They also take away one gold chain, gold karra and gold ring of the complainant and also take away ring of gold embossed with words "RK". Thereafter they take away gold chain of his wife. One gold ring embolssed with words "SLA" and a chain of gold of his

father in law was also taken by them. They also take away two watches of Rado company. The accused also take away their passports. Thereafter all the accused tied the entire members of the family with rope and put the articles in a bag Chivas Regal company and another of Nike Company belonging to the complainant and ran away from the spot. The complainant stated that he will submit list of gold and diamond articles later on which the accused had taken away. The complainant further stated that during presence of the accused in their house, they were naming each other as Harry, Mithi. He and members of his family can identify them if they are produced before them. At that time one person was also talking on phone. While leaving, they also threatened all the members of the family to kill them in case they informed the police. They also untied their maid servant Poonam while leaving the place. Thereafter, Poonam rescued them. His father in law Sohan Lal Arora informed the police on telephone. The Investigating Officer made his endorsement thereon and sent ruqa to the police station through H.C. Gurmit Singh for registration of the case on the basis of which formal F.I.R. was registered under Section 458,382 of IPC and Section 25 of Arms Act in Police Station Mataur. During the investigation site plan was also prepared. The pieces of rope were taken into possession. One cap of light colour, one glove of wool, one handkerchief and one piece of cloth of brown colour, piece of cigarette, one tape roll of light brown colour after sealing the same with seal bearing impressions "NPS" were taken into possession. Sandip Kumar was medically examined from Civil Hospital, on 5.2.2014 regarding the injury on his head which was opined to be inflicted with sharp edged weapon. Later injury was declared simple in nature. Statements as required under Section 161 Cr.P.C. were also recorded.

Since no clue was found against the accused, as such, untraced report was proposed and prepared on 6.10.2014 and sent to the higher officers for acceptance of the same.

3. *On 20.03.2015, MHC Police Station Mataur informed regarding recovery of looted articles of this case effected from the accused in F.I.R. No.28 dated 11.03.2015 under Section 399/402 of IPC and Section 25 of Arms Act, registered at Police Station Kharar by CIA, Kharar. Thereafter, ASI Lakhwinder Kumar took into possession relevant record.”*

On completion of the investigation, the police report under Section 173 Cr.P.C. was filed. Since, the offence under Sections 395 and 398 IPC were exclusively triable by the Court of Session, therefore, the case was committed to the Court of Sessions vide order dated 04.08.2015. The trial Court, after finding that prima facie case is made out against various accused, framed charges under Sections 458, 394, 398, 201 IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

The prosecution in order to substantiate the charges, examined the following witnesses:-

<i>“PW-1</i>	<i>Rajiv Kumar, Complainant</i>
<i>PW-2</i>	<i>H.C. Jaswant Singh,</i>
<i>PW2-A</i>	<i>Gurmit Singh Ahlmad to Additional District Magistrate</i>
<i>PW-3</i>	<i>H.C. Balwinder Singh</i>
<i>PW-4</i>	<i>SI Pawan Kumar</i>
<i>PW-5</i>	<i>ASI Gurpartap Singh</i>
<i>PW-6</i>	<i>H.C. Amrik Singh</i>
<i>PW-7</i>	<i>SI Harminder Singh</i>
<i>PW-8</i>	<i>Sandeep Kumar</i>

<i>PW-9</i>	<i>ASI Lakhwinder Kumar, Investigating Officer</i>
<i>PW-10</i>	<i>ASI Bikramjit Singh</i>
<i>PW-11</i>	<i>Sohan Lal Arora</i>
<i>PW-12</i>	<i>ASI Baldev Singh</i>
<i>PW-13</i>	<i>Inspector Navinpal</i>
<i>PW-14</i>	<i>Inspector Manjit Singh</i>
<i>PW-15</i>	<i>Dr. Parminderjeet Singh”</i>

While recording the statement of the accused under Section 313 Cr.P.C. all the incriminating circumstances appearing against them were put to them, however, they denied and pleaded false implication. No evidence in defence was led.

Learned trial Court, as noted above, convicted various accused including the appellant.

Learned counsel for the appellant apart from addressing oral arguments has also forwarded the written arguments on the official e-mail of this Court. The written arguments as submitted have also been perused. Learned counsel for the appellant has put forth the following submissions:-

1. The appellant has been implicated on the basis of disclosure statement made by the appellant and other accused in FIR No.28 dated 11.03.2015. He has forwarded a copy of the judgment dated 17.08.2018 acquitting the appellant whereas certain co-accused of the appellant have been convicted in FIR No. 28 dated 11.03.2015 also. Hence, he submitted that the entire basis of the prosecution's case ceases to exist.
2. The Test Identification Parade was not conducted in accordance with the procedure prescribed and, therefore, the same cannot be relied

upon.

3. That as per the case of the prosecution, Rs.4,000/- was looted from the house of the first informant whereas Rs.25,000/- is shown to have been recovered on the identification of the appellant and that also after a period of more than 1 year and 2 months from the date of occurrence.
4. That inadmissible evidence Ex.PW1/F has been relied upon.
5. That the prosecution failed to join any public/independent witness, therefore, the judgment is liable to be set aside.
6. That the charges framed by the Court were not explained in the language which could be understood by the appellant properly and, therefore, serious prejudice has been caused.
7. He further relied upon a contradictory statement made in the oral evidence. He drew attention of the Court to para 14 of the judgment of the trial Court wherein it is noted that Rajiv Kumar-first informant has stated that the appellant was armed with sharp edged weapon whereas Sandeep, another prosecution witness has stated that the appellant was armed with a pistol.
8. He further pointed out that the appellant has been falsely implicated as he has been acquitted in four cases.

On the other hand, Ms. Samina Dhir, Deputy Advocate General Punjab, while drawing attention of the Court to the judgment passed by learned Additional Sessions Judge has supported the judgment and prayed for dismissal of the appeal.

Now this Court proceeds to examine the arguments of learned

counsel for the appellant in detail.

- (i) It may be noted here that the appellant and various other accused were arrested in FIR No.28 dated 11.03.2015. In that case, allegations were that various accused were making preparation to commit dacoity. On the basis of the secret information received, various accused were apprehended with arms and ammunition. However, the appellant was not one of them. The appellant was arrested subsequently on 16.03.2015 i.e. after a period of 5 days. In the aforesaid case, the appellant was never charged with offence under Sections 399 and 402 of IPC. The appellant was charged with an offence under Section 411 of IPC.

The learned Court, after noticing that the appellant has been charged in various other cases for the same offence, refused to decide on the ground that it would result in double jeopardy. Since, the appellant was not arrested alongwith co-accused with deadly weapons pursuant to the raid conducted by the police, therefore, the appellant was never charged in the aforesaid case under Sections 399 and 402 of IPC. Thus, the judgment passed in criminal case arising from FIR No.28 dated 11.03.2015 decided on 21.08.2018 does not help the appellant. It may be noted here that the Sessions Court vide judgment dated 17.08.2018 convicted various other convicts because it was found that they have also committed various robberies/dacoities. During the course of investigation, on the disclosure statement of various convicts including the appellant, more than 1,30,00,000/- in cash alongwith gold and jewellery items were recovered. In the

considered view of this Court, in these circumstances, the appellant cannot take benefit of the acquittal by the Court of Session in criminal case arising from FIR No.28 dated 11.03.2015. Still further, this case has to be decided on the basis of evidence led by the prosecution in this case.

- (ii) Next argument of learned counsel for the appellant is that the Test Identification Parade was not conducted properly. It may be noted here that it is not necessary to conduct Test Identification Parade in each and every case. Still further, when the appellant and other accused were apprehended in FIR No.28, the first informant alongwith various other members of the family were called by the police who identified the appellant and other accused. The appellant and other convicts stayed in the house of the first informant for more than two hours. Hence, all the three eye-witnesses examined by the prosecution (Rajiv Kumar, Sandeep and Sohan Lal Arora) had enough opportunity to see the appellant particularly when none of the convicts had covered their faces. Still further, first informant-Rajiv Kumar, Sandeep Kumar (the driver of Rajiv Kumar) who was also injured by the convicts as also Sohan Lal Arora (father-in-law of Rajiv Kumar) who was also present at the time of occurrence have identified the appellant and other accused in the Court. Hence, in these circumstances, there is no substance in the argument of Learned counsel for the appellant.
- (iii) Next argument of learned counsel for the appellant is with reference to recovery of Rs.25,000/-. It has been submitted that as per the case

of the prosecution, only Rs.4,000/- is alleged to have been looted whereas the recovery of Rs.25,000/- has been shown to be made from the appellant on 01.04.2015. It may be noted here that the appellant and other accused were also involved in looting of cash van of Axis Bank. In total, more than 1,30,00,000/- in cash was recovered from various accused. In the aforesaid case as it is apparent from disclosure statements and recovery memo Ex. Pw 1/F, Ex. PW 4/E, Ex.PW 4/F, and Ex. PW4/G, Rs. 1,70,000/- in cash, a gold chain and a pulsar motorcycle was recovered from the room taken on rent by the appellant. In this case on the identification of appellant, further amount of Rs. 25,000/- was recovered. Still further, it has come in evidence that certain items of gold jewellery were sold. Hence, there is no substance in this argument of learned counsel.

- (iv) In the present case, on the disclosure statement of the appellant, not only cash of Rs.1,70,000/- was recovered but a gold chain was recovered during investigation in FIR No. 28. During the investigation of FIR No. 17 another amount of Rs. 25,000/- was further recovered on the disclosure statement of the appellant. Learned counsel for the appellant has submitted that the Court has wrongly relied upon Ex.PW1/F, inadmissible statement of the appellant. The document Ex.PW1/F is a recovery memo statement which led to recovery of an amount of Rs.25,000/-, hence, admissible in evidence under Section 27 of the Indian Evidence Act, 1872. The recovery memo is attested by two witnesses. Learned counsel for the appellant has failed to show that how such recovery memo is not

admissible in evidence.

(v) Next argument of learned counsel is with reference to non-joining of public/independent witness. It may be noted here that non-joining of public/independent is not itself fatal to the case of the prosecution. However the court is required to analyze the evidence more carefully. Ultimate judgment of conviction depends upon the creditability of evidence led by the prosecution. In the present case, on the disclosure statement of the various convicts, a lot of jewellery items were recovered and these jewellery items have been identified by the victims to be the items which were looted by the appellant along with other convicts from their house. As per the case of prosecution, on disclosure of the appellant a gold chain was also recovered from the cupboard of the room taken on rent by him. Still further, the prosecution has examined three victims namely Rajiv Kumar, Sandeep Kumar and Sohan Lal Arora, who have consistently stated that the appellant was one of the accused who committed dacoity in their house on 05.02.2014, apart from examining various police officials.

(vi) Next argument of learned counsel is also without substance. The appellant did not make any grievance before the learned trial Court that he could not understand the charges framed by the Court. Still further, the appellant was represented by a counsel. The appellant or his counsel never made any grievance during the pendency of the trial. In these circumstances, this Court find no substance in the argument of learned counsel on this aspect.

(vii) Next argument of learned counsel for the appellant, although, appears to be attractive in first blush, however, on deeper scrutiny found to be without substance. Learned counsel has submitted that there is contradiction in the oral evidence of Rajiv and Sandeep, as noticed by the learned trial Court in para 14 and 23 of the impugned judgment. He has pointed out that in para 14, the Court has noticed that Rajiv has alleged that the appellant was armed with *datt*, whereas Sandeep has stated that the appellant was armed with a pistol. This Court has gone through the evidence. It is apparent that the learned trial Court had committed a small error in this regard. Rajiv has appeared in evidence as PW1 and stated in examination-in-chief that the appellant and Buta Gir were armed with pistols. Even, in the cross-examination of Rajiv which was held on 07.12.2015, he deposed that the appellant was armed with a pistol. Therefore, there is a clerical omission in the judgment of the trial Court. However, this clerical error does not affect the merits of the case.

(viii) Next argument of learned counsel for the appellant is with reference to the acquittal of the appellant in FIR No. 28, 142, 93 and 282. It may be noted here that in FIR No.28, the appellant was never charged with offence under Sections 399 and 402 of IPC. He was charged with offence under Section 411 of IPC but the Court refused to decide the issue on the ground that the appellant is already facing trial in FIR No.17. The judgments passed in FIR No.142, 93 and 282 have not been produced. In any case, the acquittal of the appellant in other cases does not 'ipso facto' result in acquittal of the appellant in the

present case. The conviction or acquittal depends upon the evidence led by the prosecution in each case. Merely because the appellant has been acquitted in the four criminal cases does not lead the Court to conclude that he is being falsely implicated particularly when FIR No.282 was registered in Chandigarh whereas FIR No.28 was registered by Police Station Kharar. FIR No.142 was registered by the Police Station Mohali whereas FIR No.93 was registered at Police Station Shambu, District Patiala. In the present case, the FIR has been registered at Police Station Mataur, District SAS Nagar, Mohali. Thus, the appellant cannot take advantage of acquittal in other cases.

It may be noted here that in FIR No.28 and 17 (this case), the accused are common. Only difference is that in FIR No.28, there were certain additional accused.

As regards the evidence against the appellant, the prosecution has produced recovery memo Ex.PW1/F to prove recovery of Rs.25,000/- on the disclosure statement of the appellant. Apart therefrom, the prosecution has also produced disclosure statement of the appellant Ex.PW4/E in FIR No.28 dated 11.03.2015. Pawan Kumar, ASI, the investigating officer in FIR No. 28 has been examined as PW4. Ex.PW4/F is a recovery memo on the disclosure statement of the appellant which led to recovery of Rs.1,70,000/-, a gold chain and a motorcyle. Ex.PW4/G is a rough site plan of the room which was taken on rent by the appellant from where the recovery of gold chain and Rs.1,70,000/- has been made. In the disclosure statement, Ex.PW1/E, the appellant has disclosed that some gold ornaments looted have been sold and the amount derived therefrom has been

concealed by him in the cupboard of the room taken on rent by him. Apart therefrom, all the three victims namely Rajiv Kumar PW1, Sandeep Kumar PW8 and Sohan Lal Arora PW11 have consistently deposed that the appellant was carrying pistol and involved in the dacoity. In spite of lengthy searching cross-examination by learned counsel representing the appellant, the evidence of these three witnesses could not be discredited.

In view of the aforesaid overwhelming evidence, there is no substance in the arguments of learned counsel for the appellant.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.10.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No