

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2053-SB-2003 (O&M)
Reserved on: 14.12.2022
Date of Pronouncement: 22.12.2022

Rashid ...Appellant

vs.

State of Haryana ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vipin Pal Yadav, Amicus Curiae,
for the appellant.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

The present appeal is directed against the judgment of conviction and order of sentence dated 08.09.2003, passed by learned Additional Sessions Judge, Faridabad, whereby the appellant was convicted under Section 395 of the Indian Penal Code (for short 'IPC') read with Section 397 of IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default, he further undergo rigorous imprisonment for a period of one year.

Brief facts of the case are that on the night intervening 29/30.06.1999, the complainant Jiya Ram S/o Jita Ram came to the police station and got his statement recorded to the effect that he was an agriculturist. He had three sons, namely Rajender, Rajbir and Virender. Rajbir and Rajender were married, whereas, Virender was a student and he along with his family was

living in the house, situated in the fields near the kaccha path of village Sihol. On 29.06.1999 in the evening, Virender had gone to vegetable market, Faridabad. On that day, Jiya Ram, his wife Premwati and small children of Rajender were sleeping in the courtyard of their house, whereas, Rajender was sleeping in a different room. Rameshwari, wife of Rajender and Saroj, daughter of his brother-in-law were sleeping on the first floor and Rajbir was sleeping on a different roof. A noise was heard at about 12.00 O' clock in the night and the complainant reached there and saw that the door of the room was open and six persons were seen in the room. Out of them, four persons had covered their faces and they were carrying a gun and one of them was carrying a *danda*, whereas, one of them was carrying a countrymade pistol and 2-3 persons out of them were taking out the goods from the almirah kept in the room and also from the double bed. I and my wife objected to this and one of them gave a blow on my head with the butt of the gun and blood started oozing out of the same and they also gave a fist and kick to my wife also. On hearing the noise, my both sons Rajender and Rajbir also reached there and these thieves had also caused injuries to my both sons and due to this we all stood on one side and while leaving, they had taken away my riffle of .315 bore, 30 cartridges, few gold jewelry, one small T.V./ B & W, clothes, cash and few silver jewelry with them. All the thieves had come after scaling the wall and after opening the back door, they fled towards the jungle. Some persons were wearing khaki uniform and one of them was wearing a green colour T. shirt and all of them were young boys and were speaking the language of U.P. I and my sons did not chase them out of fear otherwise they would have fired also. The silver and gold jewelry belonged to the wife of Rajender and she could tell about the same and he could

identify them, if brought before him. He and his son could identify the goods stolen by them and he went to the police station with his two sons and reported the matter to the police.

After registration of the FIR, the investigation was conducted by the local police and the rough site plan was prepared. The accused/appellant Rashid was arrested on 22.09.2000 and was produced in the Court at Palwal and he suffered a disclosure statement Ex.PA in the presence of HC Shamsheer Singh and ASI Mansa Ram. The accused also agreed to join the test identification parade. However, when Tehsildar visited the jail for the purpose of the test identification parade, the accused refused to join the same and the report Ex.PL was prepared in this regard. The police recorded the statements of the witnesses and also effected recoveries from the accused.

After completion of the necessary investigation, the report under Section 173 Cr.P.C. was prepared by the police and presented in the Competent Court.

Finding a prima facie case against the appellant/accused, charge for the offences punishable under Section 395 IPC and Section 395 read with Section 397 IPC was framed against the appellant / accused to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution examined PW-1 Mansa Ram, retired ASI, who alongwith Ranjit SI/SHO interrogated the present appellant and the appellant suffered a disclosure statement confessing his crime. Even he was a witness to the disclosure statement Ex.PA suffered by the present appellant. In cross-examination, he admitted that Ex.PA was written by him which is of 22.09.2000 and he had not recovered anything from the accused.

Jiya Ram, the complainant was examined as PW-2 and he had supported the case of the prosecution. He clearly stated that on the date of occurrence, he saw 6-7 persons in front of the room and they had broken the lock of the room. They opened the almirah and double bed and clothes were separated. After that, all the accused went to the room. The accused were having countrymade pistol, knife, gun etc. and also gave a butt blow of riffle on his forehead. When his wife and son came there on hearing the noise, the accused over-powered all of them and gave a knife blow to his son and one accused gave a barrel blow to his wife. The accused gave a *saria* blow on the backside of the left shoulder and one knife blow was given to his son Rajender. He explained in detail the manner in which the entire theft was committed by the accused. He stated in the cross-examination that except one or two, all the accused were having weapons. He could not tell the names of the accused, however, the accused present in the Court had not caused any injuries to his son and again voluntarily stated that the accused caused injuries to him. He further stated that the accused person present in the Court was not with muffled face and he was wearing a dress of thanedar. The prosecution further examined PW-3 Dr. Jagmohan Mittal, who medico legally examined Premwati w/o Jiya Ram and found the following injuries on her person:

1. *Bluish reddish black bruise 9 cm x 3 ½ cm on right side of chest anterioplaterally, kept under observation and ex ray was advised.*
2. *Bluish reddish black bruise 6 cm x 2 ½ cm on left side of chest, anterioplaterally, injury was kept under observation and x-ray was advised.*

The prosecution further examined PW-4 Dr. B.L.Chimpa, who medico legally examined Jiya Ram and found the following injuries-

1. *Lacerated wound 2 C x 4 cm, skin deep, clotted blood was present over forehead. Nature of injury was simple, caused by blunt weapon within a probable duration of 24 hours.*

On the same day, he medico legally examined Rajender S/o Jiya Ram and found the following injuries:-

1. *Lacerated wound 2 x 1 cm, skin deep, clotted blood was present on forehead.*
2. *Contusion 10 cm x 3 cm red in colour over left scapular region.*

Subhash Chander, Assistant Jail Superintendent, Palwal was examined as PW-5, who was posted as Assistant Superintendent, Jail, Palwal on 25.09.2000. He stated that on that day, Amir Singh, Executive Magistrate, conducted the identification parade of the accused/appellant Rashid and the appellant refused to conduct the identification and he proved the memo Ex.PF in this regard. PW-6 Rajbir S/o Jiya Ram was another eye witness, who was beaten up and was present at the place of occurrence. He stated that the accused present in the Court wore a hat and was wearing the uniform of SHO. In cross-examination, he stated that he could not tell the name of the accused present in the Court. However, the accused present in the Court was with open face. He further stated that the accused did not cause knife blow to his brother, but knife blow was caused to his brother at the instance of the accused present in the Court and he was amongst those persons, who got the almirah broken. Further,

Rajender S/o Jiya Ram was examined as PW-7 and he also supported the case of the prosecution. He also identified the accused present in the Court, who was amongst the persons, who were wearing the uniform. Amar Singh, Tehsildar, was examined as PW-8. As per the orders of the learned Judicial Magistrate, 1st Class, Palwal, he was appointed as Executive Magistrate to conduct the identification parade in this case on 25.09.2000. At 9.00 A.M. on 25.09.2000, he went to Palwal Jail to conduct the identification parade, but the accused/appellant refused to join the identification parade and he submitted his report Ex.PF. Rameshwari w/o Rajender was also examined as PW-9, who also supported the case of the prosecution. Ajit Kumar, SDC, was examined as PW-10, who prepared the report Ex.PG after visiting the spot. Ranjit Singh, Inspector, was examined as PW-11, who had recorded the FIR Ex.PB. He also conducted the initial investigation. On 22.09.2000, the appellant was produced in the Court at Palwal and was arrested in this case formally. He suffered a disclosure statement Ex.PA in the presence of HC Shamsheer Singh and Mansa Ram, ASI. The accused had agreed to join the test identification parade, but when the Tehsildar went to the jail, he clearly refused to join the same. He recorded the statements of various witnesses and after completion of the investigation; he submitted the report under Section 173 Cr.P.C. Anoj Kumar, Draftsman, was examined as PW-12, who prepared the scaled site plan Ex.PK.

After closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence was put to him. He pleaded his false implication and opted not to lead any defence evidence to disprove the case of the prosecution.

Learned counsel for the appellant vehemently argued that the accused has been convicted without any legally admissible evidence. Still further, the prosecution was not able to prove as to how the police came to know about the involvement of the present appellant in the commission of offence after 15 months. Even the case of the prosecution was not proved beyond the shadow of doubt. Still further, the identification of the accused was held for the first time in the Court and such identification could not have been relied upon by the learned trial Court. However, I find no substance in the argument raised by the learned counsel for the appellant. In the instant case, the SHO, police Station Chandhat moved an application Ex.PJ/3 on 16.05.2000 for issuance of production warrant before the Judicial Magistrate, 1st Class, Palwal. It was written in the application that during the investigation, it was known that Rashid-accused/appellant, was lodged in District Jail at Mathura in two different cases and he was also involved in this case and his presence was required through production warrants. No doubt, the said application was not happily worded and the incriminating evidence was not mentioned in detail, still the accused cannot take undue advantage of the fault on the part of the investigating agency. In fact, immediately after arrest, the appellant/accused was interrogated by the police, after procuring his presence through the production warrants. Apart from that, the appellant also moved an application for holding the test identification parade and the appellant/accused had also agreed for the same. However, when the Executive Magistrate went to the jail to conduct the test identification parade, the present appellant refused to join the said parade. Consequently, when the appellant/accused had refused to join the test identification parade, he cannot be permitted to say that he was identified

for the first time in the Court and his identification by the witnesses was not valid.

Apart from that, the prosecution examined PW-2, who was an injured eye witness and he clearly stated that the accused present in the court was not with a muffled face and was wearing the uniform of a SHO (Thanedar). Similarly, PW-6 Rajbir s/o Jiya Ram, who was also an eye witness, identified the accused/appellant by stating that he was wearing a hat and was wearing a uniform of SHO. Similarly, PW-7 Rajender also identified the appellant/accused as the person, who was wearing the uniform of SHO. The testimonies of the above said eye witnesses have been duly corroborated by the statements of PW-3 Dr. Jagmohan Mittal and PW-4 Dr. B.L. Chimpa. PW-3 Dr. Jagmohan Mittal, clearly proved the MLR of Premwati w/o Jiya Ram as Ex.PC. Similarly PW-4 Dr. B.L. Chimpa had medico legally examined Jiya Ram and Rajender S/o Jiya Ram and proved on record their MLR as Ex.PD and Ex.PE respectively. Consequently, it is apparent that the above said witnesses Jiya Ram, Rajbir and Rajender were seriously injured in the incident and their presence at the spot cannot be doubted. All the three witnesses had duly identified the accused in the Court and such identification had been rightly relied upon by the learned trial Court. Since the accused were duly armed at the time of commission of crime, they have been rightly ordered to be convicted under sections 395 read with Section 397 IPC and the impugned judgment of conviction is upheld. Apart from that, the present appellant along with his other accomplices committed a heinous crime and has been awarded the minimum sentence prescribed by the statute, there is no ground for interfering with the

impugned order of sentence and the same is also liable to be upheld by this Court.

In view of the above discussion, there are no grounds for interfering with the impugned judgment of conviction and order of sentence dated 08.09.2003, passed by the learned trial court and the same are ordered to be upheld.

It appears from the record that the sentence imposed upon the present appellant was ordered to be suspended on 27.02.2004. Consequently, he is directed to surrender before the jail authorities, within a period of 15 days from today, failing which, the Chief Judicial Magistrate, Faridabad shall issue warrants against the appellant/accused, namely, Rashid and commit him to custody for serving the remaining sentence.

All pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial court record be sent back.

In the end, I record my appreciation for Mr. Vipin Pal Yadav, learned Amicus Curiae, who had rendered able assistance to this Court.

22.12.2022

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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No