

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-176-SB-2007 (O&M)

Reserved on:14.12.2022

Date of Pronouncement:22.12.2022

Ali Sher

...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 dated 17.04.2006 and order of sentence dated 19.04.2006, passed by learned Additional Sessions Judge, Faridabad, whereby, the appellant was convicted under Section 397 IPC and sentenced to undergo imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default, he further undergo 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.

The prosecution examined Dr. B.L. Chimpa as PW-1, who medico legally examined Jiya Ram and found the following injuries:-

“Lacerated wound 2 C x 1/4 cm, skin deep with clotted blood on the forehead on 30.06.1999. Nature of injury was simple, caused by blunt weapon within a probable duration of 24 hours.”

He also medico legally examined Rajender S/o Jiya Ram and found the following injuries:-

1. *Lacerated wound 2 cm x 1/4 cm, skin deep, clotted blood was present on forehead. Nature of injury simple injury caused by blunt weapon and probable duration within 24 hours.*
2. *Contusion 10 cm x 3 cm red in colour over left scapular region. Nature of injury simple injury caused by blunt weapon and probable duration within 24 hours.*

Still further, the prosecution examined PW-2, Dr. Jagmohan Mittal, who medico legally examined Premwati w/o Jiya Ram and found the following injuries:-

“Bluish, reddish, black brouse 9 cm x 3.5 cm on right side of chest anterolaterally and bluish reddish black brouse 6 cm x 2.5 cm on left side of chest anterolaterally.”

The prosecution further examined PW-3 Rajender and he along with his father identified the accused as one of the member, who committed dacoity in his house. He also proved on record the memo Ex.PE prepared by the police. Jiya Ram was examined as PW-4, who supported the case of the prosecution and the manner in which the offence was committed. He stated that the police brought the accused Ali Sher to there house on 24.03.2005 and he identified the accused, who was present in the Court at the time of his deposition. He was one of the person, who committed dacoity in their house and he was armed with a countrymade pistol at that time. The prosecution further examined ASI Mohd. Idrish as PW-5, who had arrested the appellant on 24.03.2005 and he had suffered the disclosure statement before the police. The appellant was also identified by Jiya Ram, owner of the house and his son

Rajender. Apart from that, Sakir Hussain, SI appeared as PW-6, who prepared and submitted the report under Section 173 Cr.P.C. on completion of the investigation.

After closer of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and pleaded his false implication. Even he opted not to lead any evidence in his defence.

I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

Learned counsel for the appellant has vehemently argued that in the instant case, the evidence to establish the identity of the present appellant was lacking and the identification of the accused in the Court for the first time is not legally admissible. In the instant case, the police failed to put the accused to the test identification parade and in absence of the same, it is not safe to rely upon the identification of the accused in the Court itself for the first time. However, the said submission has been opposed by the learned State counsel, who submitted that the accused had been identified by the eye witnesses, who were seriously injured and their presence at the place of occurrence could not be doubted in any manner.

I have considered the rival submissions made by learned counsel for the parties and find no substance in the arguments raised by learned counsel for the appellant. As per Section 9 of the Evidence Act, the evidence of identification is a relevant piece of evidence and identification of an accused in the Court is a substantive piece of evidence. No doubt, the police should have held the test identification parade in the first instance, however, the failure on the part of the police to hold test identification parade does not make the

evidence of identification in Court inadmissible. The identification in the Court is a substantive evidence and if found reliable, the same can be acted upon and the absence of corroboration by test identification parade would in no manner affect the credibility of such evidence. In the instant case, the appellant was duly identified by PW-3 Rajender, who stated that the appellant was one of the assailants, who came to their house and committed the dacoity. Similarly, PW-4 Jiya Ram, complainant / injured also identified the accused and clearly stated that he was armed with a countrymade pistol at the time of commission of the crime. His statement has been duly corroborated by the investigation conducted in the instant case. Thus, the identity of the appellant stood proved on record and the learned trial Court has recorded valid reasons for convicting the present appellant.

Still further, the prosecution examined Dr. B.L. Chimba, who medico legally examined Jiya Ram and Rajinder and proved on record their MLR. Apart from that, the prosecution further examined PW-2 Dr. Jagmohan Mittal, who medico legally examined Premwati w/o Jiya Ram and proved on record her MLR as Ex.PC. The witnesses Rajender and Jiya Ram i.e. PW-3 and PW-4 respectively were seriously injured at the time of commission of the crime and their presence can never be doubted at the place of occurrence, even otherwise, they were the natural witnesses being the occupants of the house, where the dacoity was committed. Thus, the ocular version has been duly corroborated by medical evidence and the findings recorded by the learned trial court are liable to be upheld.

Thus, the impugned judgment of conviction dated 17.04.2006 and order of sentence dated 19.04.2006, passed by learned Additional Sessions

Judge, Faridabad, is ordered to be upheld and does not want any interference by this Court . In the instant case, the appellant was ordered to be convicted under Section 397 and has been awarded the minimum sentence prescribed by the statute, no interference is required in the order of sentence passed by the learned trial Court and the same is liable to be upheld by this Court as well.

In view of the above discussion, there are no grounds for interfering with the impugned judgment of conviction dated 17.04.2006 and order of sentence dated 19.04.2006, 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 09.12.2009. Consequently, the appellant, namely, Ali Sher is directed to surrender before the Jail Authority, within a period of 15 days from today, failing which, the Chief Judicial Magistrate, Faridabad shall issue warrants against the appellant/accused 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
Whether reportable : Yes