

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

(I) CRA-S-1183-SB-2010 (O&M)
Reserved on: 25.08.2022
Date of decision: 30.08.2022

ANIL ...Appellant

Versus

STATE OF HARYANA ...Respondent

(II) CRA-S-2390-SB-2009 (O&M)

SUSHIL @ MITTAL ...Appellant

Versus

STATE OF HARYANA ...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: H.S. Ghuman, Advocate
for the appellant (in both cases).

Mr. Anmol Malik, AAG, Haryana.

SURESHWAR THAKUR, J.

1. Both the criminal appeals, are being decided through a common verdict, as both arise from a common verdict of conviction, and, also from a consequent therewith sentence(s) of imprisonment, and, of fine, as, become imposed upon each.

2. The instant appeal is directed against the verdict made on 10.09.2009, upon Sessions Case No.25 of 2007, by the learned Additional Sessions Judge, Hisar, wherethrough in respect of charges drawn against the accused under Sections 307, and, 397 of IPC, he proceeded to record a verdict of

conviction, upon the accused, whereas, in respect of a charge drawn against them for an offence punishable under Section 392 of the IPC, he recorded a finding of acquittal against the accused. Moreover, through a separate sentencing order, drawn on 11.09.2009, he proceeded to impose the hereinafter extracted sentence of imprisonment, as also of fine, upon the convicts.

“Offence

Sentence

U/s 307/34 IPC

Rigorous Imprisonment for seven years and fine of Rs.5000/- to each convict. In default of payment of fine rigorous imprisonment for two months.

U/s 397 IPC

Rigorous Imprisonment for seven years.”

3. The convicts became aggrieved from the above made verdict of conviction, and, consequent therewith sentence of imprisonment, and, of fine, as become imposed upon each of them, and, became led to institute thereagainst their respective appeals before this Court.

4. The genesis of prosecution case is carried in the appeal FIR, to which Ex.P-27 is assigned, therein a narration occurs that, on 26.6.2007 at 11.10 p.m., Munshi of Police Station, Civil Lines, Hisar, gave information through telephone, that an unknown person on account of beatings, given in the area of GRP Hisar, has been admitted in CMC, Hospital, Hisar. On receipt of the information ASI Ram Mehar reached CMC, Hospital, and obtained MLR of injured Nand Lal son of Dhanna Ram, Caste Nayak, resident of Dhakka Basti, Railway Crossing, Hisar. The doctor had declared injured Nand Lal to be unfit for making a statement. Thereafter, he obtained medical ruqqa from police post, Urban Estate-II, Hisar, and visited the hospital time and again for recording the statement of injured but every time the doctor declared the injured unfit to make the statement. On 28.6.2007 at 6:30 p.m. the injured was declared fit to make the statement, and, then the statement of injured Nand Lal was recorded, wherein,

he stated that he works with a contractor at Government Oil Depot. On the night intervening 25/26.6.2007 at about 10.15 p.m. he had left his house for railway station, Hisar, for going to Jaipur, and, when he had reached near goods store after crossing the railway phatak, two boys gave a call from behind asking him to stop, as to where he was going, upon which he stopped. One of them was Anil son of Ram Sarup Caste Nayak, resident of Railway Quarter, Surya Nagar, Hisar. His accomplice asked to take out whatever he had with him. In reply, he asked, Anil bhai (brother) why he should take out the money. He has to go to Jaipur. On this, Anil said that they will send him to Jaipur, and, by saying so Anil, and, his companion grappled with him. Anil gave a knife blow on his person, as a result of which he fell down. After his falling on the ground, they took out Rs.2000/- from his inner pocket, and, Rs.1500/- from back side pocket of his pant and, besides also snatched a Nokia mobile phone bearing SIM No.9813834149, and, after that he became unconscious. He also narrates therein, that he does not know about his suit-case which was containing his clothes and essential documents, and, also about the person who got him admitted in the hospital. He further stated that Anil and his companion after injuring him with knife have looted his money, mobile and suitcase, and, that action be taken against them.

5. On the basis of aforesaid statement, a case under section 392 IPC was registered. Investigation was carried out. Statements of witnesses under section 161 Cr.P.C. were recorded. Rough site plan of the place of occurrence was prepared. Blood stained earth was lifted from the place of occurrence. On 1.7.2007 both the accused were arrested, and, their disclosure statements, were recorded. Accused Anil got recovered Rs.1400/- from his house. Accused Anil in his disclosure statement stated, that the knife used in the commission of the offence, had already been got recovered by him, in case F.I.R. No. 67 dated

28.6.2007, constituting an offence under section-302 IPC, and, registered with P.S. G.R.P. Hisar. Since the doctor had opined, that the injury was dangerous to life, therefore section 307 IPC was added. After conclusion of other formalities of investigation, challan against the accused under sections 307/392/397 of IPC was filed in the court of the Illaqa Magistrate.

6. Since the offences punishable under section 307 and 397 IPC were exclusively triable by the court of session(s), thereupon the case was vide order dated 31.7.2007, committed to the Court of learned Sessions Judge, Hisar, by the Court of Sh.Jasbir Singh, the then learned Judicial Magistrate, Hisar, and, subsequently it was assigned to the learned trial Judge concerned.

7. After hearing both the sides and perusal of documents, since it appeared that a prima-facie case under section 307 read with section 34, and, under Section 392 of IPC read with section 397 of IPC, was made out against the accused, as such, charges were accordingly framed. The accused did not plead guilty to the charges and claimed trial. Therefore, the prosecution was called upon to lead evidence in support of its case.

8. The prosecution examined as many as eleven witnesses, and, then the learned Public Prosecutor closed the prosecution evidence after tendering into evidence FSL report(s) Ex.P44 and Ex.P44/A. PWs HC Harpal, HC-Suraj Mal and HC-Rohtash were given up as unnecessary witnesses.

9. Thereafter, the accused were examined under section 313 of Cr.P.C. to explain the circumstances which appeared against them in the prosecution case. They denied the prosecution allegations, and, pleaded innocence and claimed false implication.

10. The learned counsel for the appellants, has made a vigorous submission before this Court that, the impugned verdict of conviction, and, also

the consequent therewith order of sentence, as became respectively recorded, and, imposed upon the convicts by the learned trial Judge concerned, does suffer from a gross perversity, absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. Consequently, they have argued that the impugned verdict be quashed, and, set aside.

11. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

12. The prosecution case becomes rested, upon the deposition of the injured-victim, who stepped into the witness box as PW-6, and, also upon the deposition of PW-7.

13. Both deposed in respect of an incident which occurred, on 25.06.2007, but the above incident became reported on 28.06.2007. The convict Anil was arrested on 01.07.2007, in respect of the appeal FIR, but at that time, he was already in police custody in respect of FIR No.67 of 28.06.2007, embodying therein an offence constituted under Section 302 of the IPC.

14. During the course of his police interrogation, he made a disclosure statement to which Ex.P4 is assigned, wherein he confessed his guilt, and, also named co-accused Sushil to be a co-participant in the crime event. Consequently, co-convict Sushil was also thereafter arrested, rather on the same day when co-convict Anil became arrested by the police.

15. Be that as it may, in respect of the crime incident, which as above stated occurred, on 25.06.2007, the prosecution places reliance, upon the depositions of PW-6, and, of PW-7. Both are purported ocular witnesses to the occurrence. The FIR qua the extant crime event, as above stated became registered on 28.06.2007, and, it was rested upon a statement of the injured-

victim Nand Lal, who through an opinion embodied in Ex.P35/A, and, recorded by Dr. N.C. Verma, hence became declared fit to make a statement. Thereafter injured-victim Nand Lal made a statement embodied in Ex.P-25, and, which led to the registration of the appeal FIR. Both the injured-victim, and, also PW-7 are ocular witnesses to the crime incident hence were required to be corroborating the genesis of the prosecution case, as becomes embodied in the appeal FIR.

16. PW-6 in his examination-in-chief deposes that, on 25.06.2007 when he reached Double Crossing of railway, and, was walking towards the platform which was meant for placing goods, then Sushil, and, Anil arrived there, and, asked him, as to where he was going, and, to which he replied that he was going to Jaipur to attend a marriage. However, he testifies that both grappled with him, and, led him to request them to rather take money from him. Nonetheless, he testifies that accused Anil gave two knife blows on his abdomen, and, thereafter he fell down, and, though subsequently they fled from the crime site, but only after snatching Rs.3500/-, and, also his mobile phone, and, besides one suitcase. He has narrated that the number of his mobile phone being 9813834149. During the course of his testification he has proven the existence of his signatures on his statement to which Ex.P-25 becomes assigned, besides has also identified, in Court, both the accused.

17. Be that as it may, when he faced the rigor of an exacting cross-examination, he admitted that he has not in his previous statement recorded in writing, revealed the name of co-convict Sushil Kumar, to be a co-participant along with co-convict Anil, in the crime incident. He deposed that his brother Gopal had revealed to him, the name of co-convict Sushil, but the above fact comes under a cloud of suspicion, as he has also in his cross-examination stated, that he was aware of the names of both the accused, resultantly he was to be

revealing the names of both convicts (in Ex.P-25), whereas, he omitted to do so.

In so far as PW-6 being aware of the identity of co-convict Anil is concerned, the above factum appears to have been admitted by the defence, as in the last paragraph of the cross-examination made upon PW-6, he made an affirmative answer to a suggestion meted to him, by the learned defence counsel, that co-convict Anil was known to him.

18. PW-6 though has deposed that PW-7 Gopal was not accompanying him to the crime site concerned, but yet PW-7 has deposed that he was an ocular witness to the occurrence. Therefore, in his examination-in-chief he takes to corroborate the testification, as made by PW-6. However, his taking to mete corroboration to the testification of PW-6, does come under a deep cloud of suspicion. The reason becomes comprised in the factum that, in his cross-examination, he has been unable to state with any firmness, as to which amongst the accused inflicted the knife injuries on the abdomen of PW-6. Moreover, since, he also deposed in his cross-examination, that when the police had reached the hospital, in the night intervening 25/26.06.2007, he had made a statement to the police that, he had witnessed the occurrence, but yet he submits, that the police did not record his statement. It appears that the above factum, is completely untruthful, as the investigating officer concerned, upon his stepping into the witness box as PW-9 rather has not corroborated the above factum. Moreover, if the above factum was truthfully deposed by PW-6, then there would not have been any opportunity for the investigating officer concerned, to after seeking a declaration, from Dr. N.C. Verma, about the victim-injured Nand Lal, being fit to make a statement, to then register an FIR, in respect of the crime incident, which occurred on 25.06.2007.

19. Additionally what further erodes the credibility of PW-7, becomes comprised in the factum qua in his cross-examination, rather his revealing that he was not aware of the identity of co-convict Anil, but yet echoes that he was aware of the name of Sushil, as one of the co-convicts was rather calling the other co-participant in the crime event, as Sushil.

20. Nonetheless, even if, a shadow of doubt creeps into the prosecution case and, as arises from: (a) incredibility of the deposition of PW-7, (b) about the availability at the crime site, and, as a co-participant in the relevant crime incident of co-convict Sushil along with co-convict Anil, (c) and, though does not arise in respect of the identity of co-convict Anil, especially when as, above stated in the last paragraph of the cross-examination, as made, upon PW-6 by the defence, the learned defence counsel does admit, the earlier familiarity of PW-6 with the identity of co-convict Anil, therefore, in so far as the identification, in Court, by PW-6 of co-convict Anil, is concerned, the said identification cannot at all be construed to be legally weak.

21. Though, as above stated the presence, at the crime site, of co-convict Sushil, comes under a cloud of doubt, as PW-6 deposes that PW-7, had revealed to him about his presence, at the crime site, but with the latter on 25.06.2007, not making a statement to the police, despite his purportedly eye witnessing it, resultantly when his deposition qua the above fact becomes incredible, therefore his much later thereto mentioning the name of Sushil, rather to the investigating officer concerned, as one of the co-convicts, on the ground, that co-convict Sushil was calling aloud his name, does also gather a cloud of doubt. Therefore, since neither PW-6 nor PW-7 in their respectively made previous statements made in writing, to the investigating officer concerned, revealed therein, the key characteristic physical features of the co-

convict Sushil, as such, when his first time identification in Court, was legally weak, unless prior thereto in a valid test identification parade, both identified them to be the accused persons, who were available, at the crime site. However yet relevance yet would not become fastened, upon a test identification parade, as, conducted with respect to co-convict Sushil, wherein Ex.P-6, PW-7 hence identified him, unless both had in their respectively made previous statements in writing had described therein, the key characteristic physical features of convict Sushil, however, the above did not happen. Therefore, the identification, in Court, by the PWs (supra), of co-convict Sushil rather *prima-facie* come under a dark cloud of suspicion.

22. However, yet it is to be concluded, that the above identification for the first time, in Court, by PW-6, and, by PW-7 of co-convict Sushil, rather not limiting this Court, to also make a finding of conviction upon him. The reason for forming the above conclusion ensues from the factum that, since the crime incident is an assault case, and, also has resulted in currency notes worth Rs.3500/-, and, other items becoming snatched by both the co-convicts from the victim-injured PW-6. Consequently, if during the course of the respective custodial interrogations of both the co-convicts, both had made signed disclosure statements, wherein each confessed their guilt, and, also thereafter led to the makings of the relevant recoveries, at their respective instances, to the investigating officer concerned. In consequence, the above provenly made signed disclosure statements, by both co-convicts, and, also consequent therewith valid recoveries of the incriminatory items, would completely rather eclipse the ill-effects, if any, of PW-6, and, PW-7 rather for the first time identifying the co-convict Sushil only, in Court, and, also would completely nullify, the ill-effects, if any, of lack of credibility of the testification of PW-7.

Now, in respect of the above, with a reading of the testification occurring in the examination-in-chief of PW-9, who is the investigating officer concerned, rather revealing, that during the course of co-convict Anil facing police interrogation, his making a disclosure statement, and, whereons, he subscribed his signatures, and, also therein his confessing his guilt in the crime event, besides his also confessing the participation therein of co-convict Sushil, rather does necessarily carry the effect, that it negating all the ill-effects, if any, qua the first time identification, in Court, of co-convict Sushil by PW-6. Consequently, also when in consequence therewith co-convict Anil, through a recovery memo embodied in Ex.P-8 hence caused recoveries of the incriminatory items.

23. Moreover, during the course of co-convict Sushil Kumar facing police interrogation, he also made his signed disclosure statement(s), before the investigating officer concerned, and, to which Ex.P-5 is assigned, therein he not only confessed his guilt, but also undertook to ensure the recovery of the mobile set from the site of its becoming hidden or concealed by him, rather to the investigating officer concerned. The above made signed disclosure statements respectively by the co-convicts, also when whereafter the crime properties became also recovered, at their respective instances, to the investigating officer concerned, from the respective place of their keepings, and, hidings, conspicuously rather do acquire evidentiary worth, unless both had denied the existence of their respective signatures thereon, and/or, had led proof qua theirs' being engineered or contrived.

24. However, a reading of the evidence on record, does not disclose any of the defences (supra), rather becoming propagated by the co-convicts. In sequel the above drawn disclosure statement(s), as also the consequent therewith

recoveries, do completely suggest, that the convicts becoming connected with the crime incident, which happened, at the crime site.

25. PW-11 has proven Ex.P-35/A embodying an opinion of Dr. N.C. Verma declaring injured-victim Nand Lal to be fit to make a statement. Though, the primary evidence in respect thereof became comprised in PW-11 stepping into the witness box, but since PW-11 has deposed that he is familiar with the doctor's handwriting, as he had worked under him, as such, the above non-stepping into the witness box by Dr. N.C. Verma, for proving Ex.P-35/A, does not assume any relevance. Moreover, he likewise also has proven Ex.P-39, as recorded by Dr. N.C. Verma, hence declaring the assault injury suffered by victim Nand Lal, to be dangerous to life. In consequence, when medical evidence completely supports the deposition of PW-6, and, also supports the confession of guilt, by both the co-convicts, as made through their respectively made disclosure statements, and, whereafter both caused the recoveries of the incriminatory items, at their respective instances, to the investigating officer concerned. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as become respectively recorded, and, imposed, upon the convicts by the learned trial Judge concerned, does not suffer from a gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. Hence there is no merit in both the appeals, and, both are dismissed.

26. However, it is clarified that since in respect of the crime event committed earlier to the extant crime event by co-convict Anil, and, embodying therein an offence under Section 302 of IPC, hence this Court qua the apposite Criminal Appeal bearing No.CRA-S-1183-SB-2010, has upheld the verdict of conviction as made, upon him, by the learned Convicting Court. Therefore, if

the convict becomes any stage hereafter, to be deemed fit to become prematurely released from prison in respect of the apposite crime appeal, thereupon the imposition of the extant sentence upon him, shall thereafter run its spell, and/or, the extantly imposed sentence upon him, shall run consecutive to the sentence (supra) of life imprisonment becoming imposed, upon, the life convict. Case property be destroyed after expiry of the period of limitation. Records be sent down forthwith.

27. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

30.08.2022
Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>