

CRA-S-247-2019 (O&M) &
CRA-S-1145-SB-2018(O&M)

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2024:PHHC:028787

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-247-2019(O&M)
Date of Decision : February 26, 2024
Reserved on: February 05, 2024

UDHAMAppellant

VERSUS

STATE OF HARYANARespondent

CRA-S-1145-SB-2018(O&M)

ARSHAD ALIAS KALAAppellant

VERSUS

STATE OF HARYANARespondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Abhimanyu Kalsy, Legal Aid Counsel
for the appellant in CRA-S-247-2019.

None for the appellant in CRA-S-1145-SB-2018.

Mr. Bhupinder Singh, DAG, Haryana.

KULDEEP TIWARI. J.

1. Since the both the appeals arise out of same judgment of conviction and order of sentence, therefore, they are amenable to be adjudicated together.

2. The appellants-Udham and Arshad by filing separate instant appeals throw challenge to the judgment of conviction dated 30.11.2017, vide which the learned trial Court concerned, has convicted them for the offences punishable under Sections 395, 397 and 342 of the Indian Penal Code and sentenced them vide order of even date, in case FIR No.50,

under Sections, 341, 342, 395 and 397 of the IPC and under Section 25 of the Arms Act, registered at Police Station Hodal, which is as under:-

Sr. No.	Section	Sentence	Fine
1	395 IPC	Rigorous imprisonment for 7 (Seven) years	5000/-. In default of payment of fine, convict will undergo rigorous imprisonment for three months.
2	397 IPC	Rigorous imprisonment -- for 7 (Seven) years	
3	342 IPC	Rigorous imprisonment for 1 (one year)	1000/-. In default of payment of fine, convict will undergo rigorous imprisonment for fifteen days.

3. The prosecution agency was set into motion on receiving a telephonic information by SI Vijay SI Vijay Kumar that on 04.02.2016 that a person was looted along with his vehicle and was thrown at Garhi Chowk with his eyes, hands and feet tied, and thereupon, the police officials reached at the spot. The said person was found to be Pardeep Sethi (complainant), who moved an application submitting that on 04.02.2016, at about 5.00 a.m., he had alone gone for Vrindavan in his Swift VDI car bearing No. HR-51-BE-0650 and when he reached near the bridge of Village Banchari at about 6.00 a.m., a Swift VDI car bearing No.UP-85- AF-9832, of silver colour came from behind, which was occupied by five young persons, blocked his way and they took him out after showing him gun and country made pistol. One of them, caught the complainant from behind and the second person took out Rs. 5000/-, driving licence (DL) and ATM of ICICI Bank from the back pocket of his pant. In the afternoon of 04.02.2016 and in the morning at around 5.00 am on 05.02.2016, money was also withdrawn from that ATM card by

taking its pin number from the complainant by giving beatings to him with butts of country made pistol and rifle. The complainant further stated that he was kept confined in the forest in the day time and in a room in the night and he was thrown in the area of Garhi Hodal after blackening his eyes and tying hands and feet. Somehow, the complainant managed to escape with the help of a passersby.

4. Thereupon, the investigation was carried and site plan of place of occurrence was got prepared.

5. It transpires from the record that the appellants-convicts were infact arrested in another case FIR No.165 of 2016, registered under Section 399 and 402 of the IPC, read with Section 25 of the Arms Act and this fact has been proved by the prosecution while examining IPS Tejaswani Gautam (PW-7), wherein she disclosed that during the personal search of the accused-Arshad (appellant herein), one country made pistol alongwith 21 live cartridges were recovered from him, who was present in Innova Car bearing No.HR-26-BB-3606, and from the dash board of that car chilli powder packed in a poly pack was also recovered, and further on personal search of another accused-Pawan in that FIR one country-made pistol and 7 live cartridges were also recovered.

6, During the investigation of the aforesaid FIR, they made a disclosure statements (Ex.PW9/A and Ex.PW9/B) regarding their involvement in the instant FIR (*supra*) and consequently, on 21.06.2006 both the appellants were taken into police remand in the present case. The

disclosure statement made in the FIR which was registered in the State of Rajasthan was duly proved by PW9-Sujan Singh, who is a police official in the Rajasthan police.

7. During investigation the following recoveries were made from the present appellants/convicts:-

1. Swift car bearing No.HR-51-BE-0650 from the house of Arshad in village Hebatka.
2. one mobile phone make Nokia, one ATM card of ICICI Bank from the house of Udham in village Sehjadpur.

8. During investigation, both the appellants also demarcated the place of occurrence as well as the place where they tied the hands and legs of the complainant-Pardeep Sethi, and the place where the complainant was confined by the accused persons (appellants herein).

9. Upon completion of investigation a final report was filed under Section 173 of the Cr.P.C. and the learned trial Court concerned, finding a *prima facie* case against the accused (present appellants) framed the charges against them under Sections 395, 397 and 342 of the IPC and upon pleading not guilty both the appellants (accused) were put to trial.

10. In order to substantiate its case the prosecution examined as many as 9 witnesses and also tendered some documentary evidence.

11. Learned counsel for the appellant (convict-Udham) submits that the test identification parade of the appellants/convicts was not conducted so as to enable the prosecution to establish the identity of the appellants/convicts to connect them with the crime.

12. He further submits that no independent witness was joined at

the time of recording of disclosure statements of the appellants/convicts as well as at the time of effecting recovery from the appellants. Thus, authenticity of the disclosure statements and the recoveries effected seems to have been planted upon the appellants and cannot be relied upon to record the verdict of conviction.

13. On the other hand, the learned State counsel opposes the submissions made by the learned counsel for the appellants and submitted that the learned trial Court concerned has rightly convicted and adequately sentenced the appellants/ convicts and both the appeals are deserve to be dismissed.

14. He further submits, on instructions, that both the appellants are habitual offenders, as they are stated to have been involved in other criminal cases also.

15. This Court has examined the entire record as well as submissions made learned counsel for the appellants and that of learned State counsel.

16. After considering all the aspects of the case, this Court can safely conclude that there is no merit in the instant appeals and same are liable to be dismissed for the reasons discussed hereinafter:-

- i. It is not under dispute that the complainant's hands and legs were tied with the ropes and he was blindfolded and he was rescued by a passerby.
- ii. The prosecution examined Dr.Vipin Kumar as PW1, who medico-legally examined the complainant on 05.02.2016 and as per the report following injuries were suffered by the complainant, which by any stretch of

imagination the aforesaid injuries cannot be considered to be self suffered:

1. Bleeding clot at upper lip small wound present approx. 1cm (about) no fresh bleed. Simple, Blunt if any, More than 6 hours.
2. Blue color spot back side chest (skin) C/o Pain. Adv X-Ray chest, Blunt if any, more than 6 hours.
3. C/o Body ache. No other mark of any injury present. Simple, Blunt if any, more than 6 hours.
4. C/o pain left knee joint. Adv X-ray left knee joint, blunt if any, more than 6 hours.
5. Missing one teeth from upper right side (old missing gum). C/o pain teeth Adv. Dental opinion and X ray, Blunt if any.

iii. The looted articles which were recovered from the present appellants/convicts at the time of investigation by the investigating agency, duly establishes their their guilt.

vii. So far as the issue of non-joining of any independent witness is concerned, as raised by learned counsel for the appellants, that would not *ipso facto* vitiate the entire investigation or cast any doubt in the prosecution version.

viii. The investigating officer as well as the other witness at the time of recovery, who stepped into the witness box, were duly cross-examined by the defence counsel (counsel for the appellants/convicts before trial Court), however, nothing material could not be elucidated which could effect the probative value of evidence lead by the prosecution to establish the guilt of the appellants/convicts.

ix. The joining of independent witness is a rule of caution and not a mandatory requirement. Therefore, without any prejudice being caused to the appellants/convicts, for not joining of any independent witness, the well established prosecution evidence cannot be brushed aside solely on this ground.

x. So far as the next argument of learned counsel for the appellants, is concerned that the test identification parade of the appellants cannot be relied upon in the absence of any witness, is also not acceptable for the reason that complainant-victim, who remained in confinement of appellants/convicts, very well recognised and identified them during the court proceedings. He was also put to cross-examination but nothing material could not be elucidated in defence.

17. In view of the above, this Court does not find any perversity or illegality in the well reasoned judgment (*supra*), passed by the learned trial Court concerned and there is no ground to interfere in the instant matter and judgment of conviction (*supra*) and order of sentence (*supra*), as recorded by the learned trial Court concerned, are ordered to be upheld.

18. Consequently, the instant appeal is **dismissed**.

A photocopy of this order be placed on the file of a connected petition.

February 26, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No