



102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1289-SB-2003
Date of Decision:13.05.2024

Mahipal @ Ghora and Anr. ...Appellants

Vs.

State of Haryana ...Respondent

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

Present: Mr. R.D Yadav, Advocate
for the appellants.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The appellants have filed the present appeal against the impugned judgment of conviction dated 08.07.2003 and order of sentence dated 09.07.2003, passed by the Court of Additional Sessions Judge, Rewari, whereby the appellants have been convicted for the offence punishable under Section 395 of IPC and were sentenced to undergo as under:-

Name of Appellant	Offence	Sentence	Imprisonment in default of fine
Mahipal @ Ghora	U/s 395 IPC	RI 02 years and Rs.500/- as fine	RI 06 months
Raju	U/s 395 IPC	RI 03 years and Rs.500/- as fine	RI 06 months

2. The FIR in the present case was got registered by Parmod Kumar son of Jaswant Singh by alleging that on 28.12.2002, he was going to Village Naya Gaon, to see his sister. At about 11/12:00 AM, he alighted from the tempo and at that time, 5/6 boys came to him. Raju @ Modimar, Balli @ Baljit and



Bharat were known to him by name and he could identify others, if brought before him. Raju came to him and said that they had met after a long time. As he started moving, they had beaten him up and caused severe head injuries to him. They also snatched a sum of Rs.1200/- from the complainant and also dragged him. The complainant became unconscious and they left him therein injured condition. Some unknown person had shifted him to the hospital.

3. Initially, the complainant got it recorded to the police that he did not want to take action against the accused, as he apprehend threat to his life and he used to live alone in the house. However, on 30.12.2002, he moved a complaint to the police and the FIR was registered against the accused in the present case.

4. After the arrest of the accused, the usual investigation was conducted by the police and the final report under Section 173 Cr.P.C was presented. Ultimately, the accused were charge-sheeted under Section 395 of IPC and they pleaded their innocence and claimed trial.

5. In support of the prosecution case, eight witnesses namely Dr.J.K Saini as PW-1, C.Dharampal as PW-2, C.Bahadur Singh as PW-3, Parmod, complainant as PW-4, C. Amar Singh as PW-5, SI Mohammad Jamal as PW-6, HC Ramesh Chand as PW-7 and ASI Ram Kishan as PW-8 examined and the evidence was closed.

6. In the present case, complainant, Parmod appeared as PW-4 and reiterated the version as mentioned in the FIR by him. He specifically levelled allegations against both the appellants and it was alleged that a sum of Rs.1200/-, a chain and some company coupons were snatched by them, after causing him injuries. The prosecution had further placed reliance on the



statement of PW-1 Dr.J.K Saini, who had medico-legally examined the complainant on 28.12.2002 and found that there was smell of alcohol in his breath and proved severe injuries suffered by the complainant, Parmod. He further proved the medico-legally report as Ex.PA. The prosecution further examined PW-8, ASI Ram Kishan, who had initially recorded the FIR and had conducted the initial investigation. He had arrested the accused in the present case. On interrogation, Mahipal, appellant No.1 had got recovered a sum of Rs.100/-, out of Rs.200/-, which had fallen to his share. Even his disclosure statement was exhibited as Ex.P.C and the recovery memo was proved as Ex.P.D. Similarly, he made statement with regard to the recoveries made from the other accused in the present case as well. He proved on record the disclosure statement made by Raju, appellant No.2 as Ex.PC/2 and the recovery memo as Ex.PD/2, whereby the Raju got recovered Rs.100 and two live cartridges of AK-47 rifle. Apart from that, the statement of PW-8, ASI Ram Kishan was duly corroborated by PW-3.C. Bahadur Singh and PW-7 HC Ramesh Chand.

7. Still further, the prosecution had further examined PW-7, HC Ramesh Chand, who had recorded the statement of Parmod, complainant on 28.12.2002. However, no offence was made out from the said statement. Again on 30.12.2002, another statement was made by the complainant and after obtaining the medical opinion, the statement of the complainant was recorded, which formed the basis of registration of the FIR.

8. After concluding the evidence of the prosecution, the statements of the appellants were recorded under Section 313 Cr.P.C and they had pleaded their false implication and claimed trial.

9. Learned counsel for the appellants vehemently argued that in the



present case, no offence under Section 395 IPC was made out, because as per the requirement of Section 395 IPC, five or more persons should have jointly committed the crime and in the present case, only three persons were tried for commission of the offence. Further, no test identification parade was conducted by the police in the present case and the identity of the appellants was not proved before the Trial Court. Apart from that, learned counsel submitted that the statements of witnesses were full of contradictions and were wrongly relied by the Trial Court.

10. On the other hand, learned State counsel submitted that the Trial Court had taken into consideration all aspects of the matter and the appellants have been rightly convicted for the offence under Section 395 IPC and prayed for upholding the impugned judgment passed by the Trial Court.

11. I have heard learned counsel for the parties and with their assistance, I have carefully perused the Trial Court record.

12. In the present case, the case is based on the testimony of PW-4, Parmod Kumar, complainant. In the present case, initially, he was reluctant to lodge the FIR on the ground that he used to live alone and the accused in the present case were criminals. However, after sometime, he mustered the courage and got the FIR registered against the accused on 30.12.2002. In the FIR, the complainant had specifically named Raju @ Modimar, appellant No.2 and his other accused. He further clearly stated that he could identify the other accused and he knew them by faces. While, appearing as PW-4, Parmod, complainant had duly identified both the appellants before the Trial Court. He was subjected to lengthy cross-examination, but his testimony could not be shaken in any manner. Apart from that, even during the course of investigation, the identity of



the appellants and their co-accused clearly stood proved. Even otherwise, I have gone through the findings recorded by the Trial Court in this regard and the findings seemed to be based on correct appreciation of evidence led by the prosecution.

13. Still further, this Court finds no substance in the arguments raised by the learned counsel for the appellants that no offence under Section 395 IPC is made out against the appellants in the present case as only two persons have been convicted by the Trial Court. In fact, in the initial version itself, the complainant alleged that 5/6 boys had come to him and out of them, Raju @ Modimar, appellant No.2, Balli @ Baljit and Bharat were known to him. Later on, Mahipal, Balli @ Baljit and Raju were tried by the Trial Court. However, Bharat and Sudhir were found to be juvenile and a challan was separately presented against them before the Juvenile Court. Thus, in all, even during the course of investigation, it was found that 05 persons had committed the crime and the offence under Section 395 IPC was clearly made out in the facts and circumstances of the present case. Apart from that, learned counsel for the appellants had referred to minor inconsistencies appearing in the testimonies of various prosecution witnesses. In fact, the witnesses of the prosecution got a chance to appear before the Trial Court after several months and such minor variations are bound to creep in the statements of truthful witnesses.

14. Thus, findings no merits, the impugned judgment of conviction passed by the Trial Court is ordered to be upheld.

15. Now, advertent to the order of sentence imposed on the present appellants, this Court is conscious of the fact that the appellants are facing the prosecution in the present case since 31.12.2002 i.e for the last more than 21



years. Even Mahipal @ Ghora, appellant No.1 was aged about 20 years and Raju @ Modimar, appellant No.2. was aged 19 years, at the time of commission of the offence. Even as per their custody certificates, Mahipal @ Ghora has already undergone 01 month and 03 days of sentence, whereas, Raju @ Modimar, appellant No.2 has undergone 03 months and 14 days of actual sentence out of total sentence of 03 years. Even both the appellants are stated to be sole bread winners of their families. Thus, the ends of justice will be suitably met, if the sentence imposed on the present appellants is reduced to the period already undergone by them. However, the amount of fine shall remain unaltered in the present case.

16. In view of the above, the appeal is partly allowed and the impugned judgment of conviction is ordered to be upheld and order of sentence is modified to the extent that the sentence imposed on the present appellants is reduced to the period already undergone by them and the amount of fine shall remain unaltered.

17. With these directions, the appeal stands disposed off.

18. All pending application(s), if any, are also disposed off, accordingly.

13.05.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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