

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CRA 680 OF 2007

WITH

IA NO: CRAN/1/2008 (OLD NO: CRAN/293/2008)

**SHER SINGH @ SATYA NARAYAN CHOUHAN
VS**

STATE OF WEST BENGAL

For the Appellant : Mr. Sumanta Ganguly, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Trina Mitra, Adv.

Last Heard on : 24.04.2025

Judgement on : 11.06.2025

CHAITALI CHATTERJEE DAS, J:-

1. This Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgement and order dated September 29, 2007 passed by the learned, Additional Sessions, Judge, Fast Track, 1st Court, Asansol, Burdwan, in Sessions Trial number 38 / 2006 and Session case no.5/2006, convicting the appellant under Section 394 of the Indian Penal Code and sentence him to suffer Imprisonment for seven years and to pay a fine of ₹2000 only.
2. Bereft of any details ,the prosecution case was launched on the basis of statement of Ram Lakshman Mehra, son of late Bishnu Mehra, loco driver,

Chinakuri, Imli Dhwarā ,Police station, Kulti District Burdwan made before the police officer of Neyatnatpur Out Post at P.S Kulti, which was treated as the written complaint. It was stated by said, Ram Laxman Mehra, who was working as Loco driver at Chinakuri colliery that on 16.10.1990, he and his son Kadam Dev were sleeping in his quarter in the night at about 10 P.M., then at about 1am on 17.10.90 Kote Singh asked repeatedly to open the door with a threat to break open the door.

3. On refusal to open the door he threatened to break open then out of fear he opened the door and found three persons who entered into the room are 1) Share Singh, a resident of Burnpur and used to come at Chinakuri No. 1 pit 2) Lalu Lama son of late Fulwa Singh Lama working as line mistri at China Kuri No .1 pit, and Milan a resident of Ramghat Chinakuri. They entered into his room, and noticed, Sher Singh had a Bhojali in his hand, Lalu had a Tangri in his hand and knife in the hand of Milan. Lalu hit him on his head with the backside of Tangri as a result he suffered injury with profuse bleeding in his head, Milan hold the knife on his neck, Sher Singh asked him to give money quickly. Out of fear, his son gave ₹40, then those persons took away one cream coloured woollen shawl, one three cell jeep torch, one Orient wristwatch. After they left one man entered crossing the wall of his cousin brother Jagdish Mehra and opened the door and all three entered inside.

4. The complainant and his son did not go out of the house .His brother's quarter is situated adjacent to his quarter, and heard an altercation and scuffling from his house, and thereafter it was silent .After sometime at about 3.30, this complainant heard hue and cry in the locality and

thereafter all the people started to assemble and then they also came out. He along with his son, Kadam Deo, Prashant Mehra, Nazar Ali & Dukha Prasad Dukhi Mehna, Prakash Mehra, and many people of the locality, entered into the house of his cousin and found his cousin lying dead in the room with profuse bleeding. His cousin sustained one deep injury on the neck and it was stated to them by Nazar Ali, Dukha Prasad, Dukhi, Mehra, that Sher Singh , Lalu Lama, and Milan forcibly barged into their houses consecutively between 12 to 1 o'clock at night and assaulted someone and threatened someone and snatched away, silver chain, earring from the house of Dukha Prasad, silver necklace, one pair earring, Payel, Anglo Swiss wristwatch and liquid cash of Rs. 900/- from the quarter of the Dukhi Mehra ,one Anglo wrist watch and liquid cash of around 120 from Prakash Mehra and Rs 950/- from the house of Nazar Ali. They threatened all the persons to kill if they come out of their houses. Those three persons were known to every one of that locality being resident who had a history of snatching and burglaries.

- 5.** On the basis of their said statement Kulti P.S. case number 254/90 dated 17.10.90 started under Section 394/302/304 I.P.C against the accused persons. After investigation, the charge sheet was submitted under section 394/302/304 I.P.C against Sher Singh Alias Satya Narayan Chauhan. The other accused Milan Bengali was shown as absconder and order of proclamation of warrant was issued and Lalu Lama alias Lalu Nepali died on 14 .9. 91 at SD Hospital, Asansol. After commitment, the formal charges were framed under section 394/302/304 IPC, and the contents were read

over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Hence the trial commenced.

6. The learned trial court after examining the evidences adduced on behalf of the prosecution, held the present appellant is guilty of the offence punishable under Section 394 of Indian Penal Code, and accordingly passed the order of conviction against which the instant appeal has been filed by the appellant.

Submissions

7. At the outset the Learned Advocate of the appellant argues that the evidence of this case was adduced after 17 years from the date of complaint lodged and the order of conviction was passed against the appellant relying on the sole testimony of the de-facto complainant without considering the inconsistencies and departure from the facts and circumstances. It is argued that the prosecution witnesses failed to support the prosecution case, the seizure list witnesses denied that the seizure was made in their presence. P.W.1 did not say any such material evidence and P.W.2 heard the news of murder and could not identify the accused on dock. P.W.3 did not support the prosecution case having no knowledge of the incident. P.W. 4, P.W.5 the I.O, P.W 8 the R.O all at police personnel and P.W.6 is the autopsy surgeon and P.W. 9 did the inquest .The de-facto complainant adduced evidence as P.W. 7. It is argued that there was no T.I parade. None of the witnesses support the case of prosecution that the accused was a habitual offender and or known for the same in the locality. No offending

weapon was seized by the I.O from this accused person or from any place shown by him.

8. The learned Trial Court after appreciating the evidences put implicit reliance on the sole testimony of P.W. 7 and passed the order of conviction against this appellant. It is further argued the learned judge had to pass the order of conviction only under Section 394 I.P.C when the charge was for more serious offences, under Section 302 of the Indian Penal Code. Therefore, the prosecution has miserably failed to prove the charges before the learned court beyond all reasonable doubt, and accordingly, the judgement and order of conviction should be set aside.

9. The prosecution on the other hand strongly opposes such argument and submits that in order to prove the charge, the prosecution adduced 9 witnesses including the police personnel and the autopsy surgeon. Furthermore the statement given by the injured victim could not be impeached by the defence counsel, when the said victim adduced evidence as P.W.7. He specifically stated that he was assaulted at that night by Sher Singh, railway Nepali, Milan Bengal. He specifically said that the above mentioned persons entered into his house and assaulted him severely in his head, in his throat at the back and he sustained bleeding injury in the Partial region and also snatched away his wrist watch ,shawl and torchlight from him. He was also present at the time of inquest of the body of his elder brother, and he put LTI in the inquest report. It is also argued by the prosecution that the Doctor who did the autopsy adduced evidence as P.W.6 and he corroborate the statement made by the injured which fully supports the case of prosecution. The learned judge after considering the evidences of

the prosecution witnesses both verbal and documentary evidences, rightly observed that prosecution has been able to bring home charge against the accused under Section 390 (4) IPC beyond reasonable shadow of doubt against the share accused Sher Singh.

Analysis

- 10.** Heard the submissions of both the learned advocates. On the basis of the above facts and circumstances, from the submissions advanced by both the learned advocates as well as the evidences, both verbal and documentary, the moot question which falls for consideration is whether the accused person committed the offence punishable under Section 394 of the Indian Penal Code and or whether the learned trial court was right in passing the order of conviction against the present appellant. At the outset it can be seen that the charge was framed initially under Section 394/302/34, IPC, but the order of conviction passed only under Section 394 IPC as the adequate and sterling evidences were not found against him to attract the graver charges.
- 11.** The prosecution case started on the basis of the statement of Ram Laxman Mehra against the present appellant and two other accused persons of forceful entry into their house in the midnight with deadly weapon, threatening and assault on him resulting him to suffer bleeding injury .They also demanded money and out of fear, his son handed over ₹30 and they also took the woollen shawl, torch, orient wrist watch and while leaving his house, entered the quarter of Jagdish Mehra, who is the cousin brother of the de-facto complainant. Around 3 to 3.30 a.m. after hearing hue and cry in the locality, when they came out and entered into the house of Jagdish,

they found the dead body of Jagdish Mehra, lying on earth inside the quarter with deep injuries in his throat.

12. In order to bring home the charges, the prosecution used 9 witnesses and marked the document evidences as exhibit 1 to exhibit 9. Interestingly in this case said Ram Lakhan Mehra adduced evidence as PW7 and could not recall the month or date of incident. The said witness deposed on 19 April 2007 when the incident took place in the year 1990, the charge was framed on 27th day of January, 2006 and evidence started on from 24th day of April 2006. It is natural that the complainant will not be in a position to say the minute details after this long gap of 17 years and unless any trustworthy corroboration is found, it would be difficult for the court to pass an order of conviction. In this case the learned court passed the order of conviction only under section 394 of the Indian Penal code.

13. The de-facto complainant said that incident happened at about 2:30 AM and he was assaulted at about 8 to 9 am (it can be treated as typographical error) by the appellant. The accused persons first knocked their door and initially he did not open it, but on threatening compelled to open the door. Immediately they entered and hit him on his head with the backside of the weapon by the present appellant at the parietal region. In his cross examination said he was struck down on the outer door, the entrance of his quarter and he fell down and lost his sense and regained sense in the dawn of the next day.

14. He further said that the time required after opening the door and the assault will not exceed 10 second. After regaining his sense he went admitted at Sanctoria hospital and was treated by the colliery doctor about

9-10a.m After attending doctor he returned to his quarter and then after having discussion with his neighbour went to the police station and at 9 A.M lodged the complaint. In his statement recorded by the police he never said he became senseless immediately after opening the outer door of the quarter, rather he gave the vivid details as to how the accused persons had deadly weapon in their hands and the manner in which he was threatened and assaulted. Once it is said before the court that he lost his sense the entire content of the statement made before the police becomes doubtful. Interestingly his son was throughout present then why he did not go before the police station and why he was not cited as a witness. The evidence of other witnesses whose presence was said to be there at the house of the cousin brothers Jagadish in the morning and the accused persons also alleged to have attack their houses, snatched away some valuables, did not support the prosecution story and even denied to have the knowledge of any incident of murder in their locality on the date and time. From his version further question arises that when their faces were covered with napkin and warm clothes as it was a winter night how the victim could identify each of the accused within such 10 seconds of, more so when there was hardly any light. From his evidence it can be seen that he did not read and write Bengali and the F.I.R was written by the police but the content was not read over to him and he put his L.T.I. It is quite surprising that despite knowing the fact that the complainant is an illiterate person the officer recorded the same in English without reading and explaining the content.

15. The Hon'ble Apex Court, dealing with the testimony of a sterling witness in the case of Rai Sandeep @ Deepu state vs State (NCT of Delhi) reported in¹, has held that;

'In our considered opinion, the sterling witness should be of a very high-quality and calibre, whose version should, therefore, be unassailable. The court, considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness should be material and what would be relevant is the truthfulness of the statement, made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand. The cross-examination of any length, and however strenuous it may be and under no circumstance should give room for any doubt as to the fact of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material, such as the recovery is made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can ever be stated that it should be akin to the test applied in case of circumstantial evidence where they should not be any missing link in the chain of circumstances to hold accused guilty of the offence alleged

¹ (2012) 8 SCC 21

against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a sterling witness whose version can be accepted by the Court without any corporation, and based on which the guilty can be punished. To be more precise, the version of the seed witness on the court spectrum of the crime should remain intact while all other attendant materials, namely oral, document and material objects should match the same version in material particulars. In order to enable the court, trying the offence to rely on the core version, to sieve the other supporting materials for holding the offender guilty of the charged alleged.'

16. In the light of the parameters as discussed in the above judgement the nature of evidence adduced certainly he cannot be said to be the sterling witness. Therefore the corroboration to his testimony must be looked into, however in this case no such corroboration can be found. The treating doctor was not cited as witness nor the injury report was produced to substantiate the de-facto sustained injury. In fact the P.W 5 the I.O did not collect the injury report which could otherwise be relied upon for the purpose of corroboration.

In order to establish section 394 of IPC, essential ingredients are;

- a) the accused committed or attempted to commit robbery
- b) he and anyone else jointly concerned in committing or attempting to commit robbery caused hurt,
- c) hurt was caused voluntarily.

17. According to the statement of Ram Lakhan Mehra, before the Kulti police station he never said that he became senseless immediately after opening the main door of the headquarter or he went to the hospital for treatment. He further mentioned about some persons who were present at the houses of Jagdish Mehra at time he and his son went to the house of Jagdish in the morning after hearing, hue and cry from the locality. Those persons have adduced evidence as P.W.1, 2 and 3 but none of them could remember about the incident and said, they heard about the murder of Jagdish Mehra. They even could not say the names of the person from whom they heard about such murder. The said witnesses were not declared as hostile witnesses and of no help for the prosecution to establish his case. Other than the injured witness, P.W.5, P.W.8 and P.W.9 are all police personnel including the I.O. P.W.8 were posted as officer in charge of Kulti police station and at about 7 AM received a telephone information about an incident of robbery with murder at Imli Dhwar, Chinna Kuri. He recorded the statement of Ram Lakhan Mehra, which was written by him and was not read over and explained the content to the injured who put his L.T .I on it. However, he did not investigate the case and directed S. I Bhumidar Das to investigate the case immediately on arrival at the P.S. However, he failed to state the actual time when he endorsed the case to said Mr Das. Bhumihar Das adduced evidence as P.W.9 and then evidence of this witness discloses that there was no T.I parade. He did not receive any document for authentication of the articles alleged to have been stolen. He did not receive any complaint prior to the alleged incident complaining of robbery in that area. He did not examine any doctor of Sanctoria Hospital, where he sent

the injured persons, namely Ram Lakhan Mehra, Dukhanti Prasad and Dukhi Mera for examination, but did not collect any injury report. There is no supporting material to the plea taken as P.W.5 that he received any telephonic information from an unknown person of Robbery and murder in the locality .No copy of GD number 453 dated 17.10.90 was produced before the court. The point is when the witness P.W.7 himself stated before the court that he lost his sense immediately after assault, then why he had to go before the police station to lodge the complaint when his son Kapil Deo was very much present at the relevant time at the P.O.

18. Furthermore the injured recorded the statement on 17.10.90 at 7.35 hours when around 1 AM, the incident occurred on 16. 10. 90 and he sustained a bleeding injury on his head and there was profuse bleeding from his head. In the statement given before the police station, he narrated that how the three accused armed with deadly weapon, threatened them and snatched certain articles but never said about his treatment .He specifically mentioned that his son gave ₹40 out of fear. Karam Deo, his son and he was sleeping when such incident happened so the said son was the eye witness to the incident but Karam Deo was not cited as prosecution witness.

19. In the above nature of evidences and the facts and circumstances, the testimony of P.W.7 becomes the most vital as he claimed to be the injured due to assault by the accused persons who entered into the quarter with the intention of doing robbery. It is the P.W.7, who saw the accused persons burgling into their quarter at the midnight and the injury sustained by the P.W.7 by the accused persons. Not a single witness has come forward to

support the prosecution case, though fact remains there was a murder on the alleged date of incident. The learned trial court took note of the decision of the Hon'ble Supreme Court in *Vadivelu Thakur vs The State of Madras*² where it was observed that a court can, and may act on the testimony of a single witness, though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

20. It is now also settled that the order of conviction can be passed on the basis of the sole testimony of the injured witness subject to the fact the same is trustworthy enough to be relied upon and if doubts occurs about the reliability then corroboration is necessary. In the instant case, excepting the statement made before the police station by the de facto injured complainant, no other oral or documentary evidence can be found to support the same. Even for the sake of argument, the minor deviations or discrepancies made while adducing evidence than mentioned in the complaint can be ignored on account of the prolong delay, the absence of injury report of the injured, nonproduction of the alleged G D E, by the P.W.8 or P.W.9, non-mentioning of any bleeding injury of the de-facto complainant while recording the statement, non-examination of the son of the injured and denial of presence by the local residents who were allegedly were found in the house of Jagdish Mehra, not conducting any T. I parade of the accused, no recovery of the offending weapon certainly are factors which appears to be fatal in believing the prosecution story. The learned trial court heavily relied upon the evidence of P.W.7 ignored the above facts and the deficiencies which creates cloud over the case of prosecution. This court also

² (AIR 1957 SC 614)

on close scrutiny of his evidence find that his testimony by no stretch of imagination can be said to be of sterling quality or trustworthy and therefore cannot be relied upon for passing an order of conviction. The observation made by the learned trial judge appears to be on the basis of surmise and conjecture and therefore is not tenable in the eye of law. In order to prove the guilt of the accused the prosecution should make an earnest effort to place the material evidence both oral and documentary which truthfully and satisfactorily demonstrate and fully support the case of prosecution.

- 21.** Therefore in the backdrop of the aforesaid discussion I am of the opinion that the prosecution has not been able to establish cogently the participation of the accused /appellants in the instant case on the basis of sole testimony of the de-facto complainant . Accordingly the judgement and order of conviction is liable to be set aside.
- 22.** In view of the above this CRA stands allowed.
- 23.** The judgement and order passed by the learned Session court in S.T No. 5/2006 on September 29.2007 is hereby set aside.
- 24.** Let a copy of this judgement along with the Trial court record be forthwith sent before the Trial Court.
- 25.** Photostat copy of this judgement if applied, shall be made available upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS,J.)