
(2006) 11 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 72-SB of 1993

Hori Lal and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2007) 1 RCR(Criminal) 551

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Advocate : Jaswant Jain, for the Appellant; Sidharth Sarup, A.A.G., for the Respondent

Judgement

T.P.S. Mann, J.—The three appellants were tried along with two others, namely, Sukla alias Kaliya and Om Pati for offences u/s 395 read with Section 397 IPC. Vide judgment and order dated 23.2.1993, Additional Sessions Judge, Rewari convicted the appellants for the said offences and sentenced them to undergo RI for seven years and to pay a fine of Rs. 1,000/- each. In default of payment of fine, the defaulter was directed to undergo further RI for three months. Remaining two accused, namely, Sukla alias Kaliya and Om Pati were acquitted of the charges against them. It may also be mentioned here that there was one more accused, namely, Harpal, who could not be arrested during the investigation of the case and was, accordingly, declared a proclaimed offender.

2. The occurrence in question had taken place on 20.10.1987 at about 9.00 p.m. at Rewari when five persons, in the age group of 20-26 years, entered the house of complainant Tara Chand situated at Bawal Road. At that time the complainant was watching television programme in the baithak of his house. His family members were also sitting by his side. His Chowkidar Puran was present outside the house. He was told by his daughter-in-law Nirmala that their Chowkidar had received electric current. At this, the complainant went out and saw the Chowkidar lying on the ground. The five accused were found standing there. One

of them was having a pipe, while others were armed with knives and chhuries. They caught hold of him and slapped him besides asking him to hand over the cash to them and they key of almirah. One of the accused took out currency note worth Rs. 20/- lying in his pocket. Four of the accused then entered the house, while one remained present near the Chowkidar. The ladies and children shut themselves in the bed-room. The accused asked them to open the door else they would shoot the complainant. On this they opened the door. The accused obtained the key of almirah from Nirmala and after opening the almirah they took out four bangles of gold, weighing about 10 tolas, belonging to Shahi Bala, three rings of gold, two pairs of ear rings, one pair of silver tops, one big ring (kara) of silver, some other ornaments of silver, coins and two wrist watches. The accused put the aforementioned ornaments in a brief case lying on the almirah. On finding an opportunity, the complainant managed to slip out of the house and raised an alarm, which attracted one Sahasar Budhe, an NCC Major, who was residing in the neighbourhood. Said Major caught hold of the dacoit but another accused gave a pipe blow on his head. All the accused thereafter ran away by scaling over the boundary wall of the house. The complainant also received a pipe blow on his fore-head from them while they were fleeing from the spot.

3. Complainant Tara Chand, while accompanied by Major and the Chowkidar went to the Police Station to lodge a report. On his statement, FIR Ex. PA was registered at 10.45 P.M. by Inspector Ram Nath. The police then visited the place of occurrence, prepared rough site plan Ex. P-5 and recorded the statement of the witnesses. Two foot-moulds were lifted from the spot out of which one was of bare-foot and the other with shoe. Fingers prints were lifted from the wooden-box, which was used for keeping the ornaments, lid of cream packet and drawer of the table.

4. On 2.11.1987, a police team went to Delhi in search of accused. When they reached Jamna Park, Delhi it saw accused Harpal and Rahish Ahmad accused. Both of them were apprehended. On the search of accused Harpal, two bangles, two tops and two silver coins were recovered. He made a disclosure statement regarding having concealed one knife in the ditches near the place of occurrence which he could get it recovered. On the search of Rahish Ahmad accused, two bangles, two kokas, one tops, a wrist watch and silver coin of Rs. 10/- were recovered. This accused also made a disclosure statement in respect of a pistol kept concealed by him in the ditches near the place of occurrence. On being taken to Rewari, accused Rahish Ahmad got the pistol and two live cartridges recovered from the stated place.

5. On 6.11.1987 accused Ram Singh and Sukla were arrested. The former was, in fact, brought from Uttar Pradesh, where he was in custody in some other case. Said Ram Singh made a disclosure statement that he had kept concealed ornaments near railway line near the signal. In pursuance thereto he got recovered two rings of gold, one ring of silver, one pair of Pajeb (silver) and one guchha of silver. Similarly, Sukla accused suffered a disclosure statement,

pursuant to which he got recovered one wrist watch, tops and a guchha of silver from a godown situated in Anaj Mandi, Rewari.

6. Hori Lal accused was arrested on 17.11.1987. He also similarly suffered a disclosure statement and got recovered a dabba of silver, four chutkies of silver, one gold tops, two bangles of gold and three coins of silver with brief case from bunga of husk in his village. The crime foot-moulds and the finger prints, along with specimen moulds and specimen finger prints of all the accused were sent to the laboratory for comparison. It was found that one mould with shoe, tallied with that of Harpal and so also his finger prints available on one of the aforesaid articles.

7. After the conclusion of the investigation, challan was presented and commitment of the case followed. Charges were thereafter framed against the five accused, who pleaded not guilty and claimed trial.

8. The prosecution thereafter examined PW-1 Shashi Bala, PW-2 Nirmala, PW-3 Dewan Chand, PW-5 Tara Chand, PW-6 HC Shiv Dutt, PW-7 Vijay, PW-8 Shri B.S. Rawat, Senior Sub Judge, Kaithal, PW-9 Inspector Om Parkash, PW-10 Madan Lal, PW-11 SI Sukhbir Singh, PW-12 Amar Singh, PW-13 Puran, PW-14 Inspector Ram Nath, PW-15 Dr. Chander Bhan, PW-16 C. Kirti Bhushan, PW17 HC Beer Singh, PW- 18 SI Ram Sarup, PW-19 Babu Ram, PW20 Jhabbar Singh, PW-21 Sabah Singh Chanana, Scientist Asstt., FSL, Madhuban, PW-22 V.S. Dhillon, Draftsman and PW-23 Chhote Lal.

9. Out of the 23 witnesses, testimony of Shashi Bala as PW-1, Nirmala as PW-2 and Tara Chand as PW-5 is most relevant. All three of them were the eye-witnesses of the occurrence and they supported the case of the prosecution. It may also be mentioned here that Shahi Bala and Nirmala identified the accused in the Court, whereas Tara Chand refused to do so. As per the testimony of Shri B.S. Rawat PW-8, accused Hori Lal was produced before him on 18.11.1987 for the purpose of test identification parade but he refused to join the same on the plea that he had been shown by the police to the eye-witnesses. Dr. Chander Bhan PW-15 deposed about the medical evidence. He had medico-legally examined Puran Chowkidar on 21.10.1987 in PHC, Bawal and found three injuries on his person. One of them was a diffused swelling, whereas the other two were complaints of pain. Tara Chand complainant was also medically examined by Dr. Chander Bhan on the same day. Two injuries were noticed on his person, one was a laceration while the other an abrasion. Major Sahasar Budhe, who as per the FIR received injuries on his person, was also medically examined by Dr. Chander Bhan and two injuries were noticed, which were lacerated wounds. As is clear from the medico-legal reports of all the three injured, only blunt weapon injuries were found on their person and that all the injuries were simple in nature except injury No. 2 on the person of Sahasar Budhe, which was a fracture of base of distal phalanx of left thumb.

10. When the prosecution case was put to the accused on their examination u/s

313 Cr.P.C., they denied the correctness of the allegations and pleaded that it was a false case and nothing was recovered from them.

11. While challenging the conviction and sentence of the appellants, learned counsel has submitted that complainant Tara Chand while being examined as PW-5 did not identify any of the accused at the time of the trial of the case. Even during the investigation of the case no arrangement was made by the prosecution to hold test identification parade. Moreover, the arrest of two of the accused on 2.11.1987 from a park in Delhi was nothing but a crude padding done by the police as no one was named in the FIR as accused and police had no information that Harpal and Rahish Ahmad were present in the park at Delhi from where they could be apprehended. It was also submitted that the prosecution tried to build a case that the accused had booked two rooms in a hotel situated on Gurdwara Road, Rewari but Chhote Lal PW-23, owner of said hotel, did not support the case of the prosecution and he stated that he had not seen those persons, who had stayed at his hotel nor he could identify them. Moreover, no evidence was produced by the prosecution regarding the accused, who had booked the rooms by making entries in the register as the said register was not produced in the Court.

12. Learned counsel appearing for the State of Haryana while opposing the plea of the appellants argued that Shashi Bala PW-1 and Nirmala PW-2 duly identified the accused during their examination-in-chief in the Court. Failure of Tara Chand PW-5 to identify the accused in the Court could be on account of the fact that he was 87 years of age. The recovery of various gold ornaments and silver ornaments besides other articles like wrist watch from the accused in pursuance of their disclosure statements as well as personal search corroborated the correctness of the prosecution version especially when these ornaments and articles were duly identified by PWs 1, 2 and 3 in the Court. The medical evidence regarding presence of injuries in Puran Chowkidar and Major Sahasar Budhe also corroborated the case of the prosecution that while committing dacoity the accused were armed with deadly weapons and used the same in inflicting injuries.

13. Shashi Bala as PW-1, Nirmala as PW-2 and complainant Tara Chand as PW-5 gave the details of the occurrence. Their testimonies regarding the actual occurrence are worth relying upon. Shashi Bala and Nirmala identified the accused in the Court as well. Mere fact that complainant Tara Chand PW-5 could not identify them was no ground to discredit his testimony. In fact, on account of his old age, he being 87 years old, it would have been almost impossible for him to identify the accused.

14. Sufficient corroboration is available to the case of the prosecution from the recoveries of various gold and silver ornaments and other articles recovered from the accused. All those ornaments and articles were duly identified by Shashi Bala PW-1, Nirmala PW-2 and Diwan Chand PW-3.

15. In so far as the arrest of the accused is concerned, it is clear that the police got lead when it came to know about the accused who checked into a hotel at Rewari. From the entries made in the register, the identification of the accused came to be known. That was the starting point from where the police further moved to zero in on the accused. Ultimately on 2.11.1987, police party headed by Inspector Ram Nath reached Jamna Park, Delhi from where it arrested Harpal and Rahish Ahmad. Ram Singh and Sukla @ Kaliya were arrested on 6.11.1987 whereas Hori Lal on 17.11.1987. Mere fact that PW-23 Chhote Lal did not identify the accused or had not seen the accused while checking into his hotel or that the register maintained in the hotel was not produced in the trial Court were not sufficient to disengage the identity of the accused from those who were present at the time of the incident in question. An attempt was also made by the police during the investigation to hold test identification parade but the accused refused to participate in the same. Hori Lal accused did offer an explanation for his refusing to join the test identification parade that he had been shown to the witnesses. However, Shri B.S. Rawat PW-8 categorically stated that the accused was in muffled face when he was produced before him for the purpose of holding the identification parade.

16. Learned counsel for the appellants raised an argument that none of the injuries found on the three injured was the result of any sharp edged or sharpened pointed weapon. All the injuries were shown to be the result of blunt weapon. There was thus, a doubt created in the prosecution version that the accused were armed with deadly weapons, like knives, chhuries and pistol, apart from the iron pipe carried by one of the accused. If that be the position then the accused could not be convicted u/s 397 IPC. At the most it could be a case falling u/s 395 IPC.

17. Learned counsel for the State submitted that even if the presence of knives, chhuries and pistol with the accused was not accepted, it was still clear that the accused were carrying iron pipe, which could also be termed as a deadly weapon and thus, the conviction of the accused u/s 397 IPC could not be disturbed.

18. As per the initial version given in the FIR and the latter version before the Court, one of the accused was carrying an iron pipe while the others were carrying knives and chhuries. Pistol was also carried by one of the accused. However, there is no corroboration that pistol or knives or chhuries were used during the occurrence. All the injuries were caused with blunt weapon. The accused, who was having the pipe with him could cause those injuries. Coming to the point as to whether the use of pipe could be considered as use of the deadly weapon, it may be seen that apart from fracture of base of distal phalanx of left thumb of Sahasur Budhe, no other injury received by the three injured was grievous in nature. In fact, a couple of them were only complaints of pain. Under the given circumstances it could not be said that the accused were armed with any deadly weapon. After reaching such a conclusion, this Court finds that the conviction of the appellants u/s 397 IPC is not maintainable.

19. Accordingly, the appellants are acquitted of the charges under Sections 395 read with Section 397 IPC. Instead, they are convicted u/s 395 IPC.

20. Coming to the quantum of sentence, it may be seen that the occurrence in question had taken place in the year 1987. The accused have faced the agony of criminal prosecution for the last more than 19 years.

21. Ends of justice would be amply met by sentencing the appellants to undergo RI for three years and to pay a fine of Rs. 1,000/- each u/s 395 IPC. In default of payment of fine, the defaulting appellant shall undergo further RI for three months. Ordered accordingly.

22. Except for the modification in the nature of offence and sentence, the appeal is, accordingly, disposed of.