

CRA-S-153-SB of 2008 (O&M), CRA-S-2337-SB of 2007 (O&M), 1
CRA-S-2366-SB of 2007 (O&M) and
CRA-S-3228-SB of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: April 29, 2016
CRA-S-153-SB of 2008 (O&M)

PawanAppellant

Versus

State of HaryanaRespondent

CRA-S-2337-SB of 2007 (O&M)

Sunil alias Dholia and anotherAppellants

Versus

State of HaryanaRespondent

CRA-S-2366-SB of 2007 (O&M)

ManjeetAppellant

Versus

State of HaryanaRespondent

CRA-S-3228-SB of 2014 (O&M)

Om ParkashAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Ms. Aditi Girdhar, Amicus Curiae
for the appellant(s) in (CRA-S-153-SB of 2008 and
CRA-S-2377-SB of 2007).

Ms. Geeta Sharma, Advocate
for the appellant (in CRA-S-2366-SB of 2007).

Mr. Deepak Gupta, Advocate
for the appellant (in CRA-S-3228-SB of 2014).

Ms. Dimple Jain, AAG Haryana.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?
- 2. To be referred to the Reporters or not?
- 3. Whether the judgment should be reported in the Digest?

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A.B. CHAUDHARI, J (Oral)

This order shall decide the criminal appeals bearing CRA-S-153-SB of 2008, CRA-S-2337-SB of 2007, CRA-S-2366-SB of 2007 and CRA-S-3228-SB of 2014 as all the appeals have arisen out of the same occurrence.

Being aggrieved by the judgment and order dated 27.09.2007/29.09.2007 passed in Sessions Case No.7 of 2007 and judgment and order dated 22.07.2013/23.07.2013 passed in Sessions Case No.14 of 2011/2012, by which the Sessions Judge, Narnaul convicted and sentenced the appellants, awarding the rigorous imprisonment of seven years under Section 395 of the Indian Penal Code, 1860 ('IPC' for short), and a fine of ₹5,000/- upon each accused and in default of payment of fine, rigorous imprisonment for six months, the instant appeals were filed by the convicted persons.

FACTS

In brief, the case of the prosecution was that the complainant-Tulsi Ram (PW-19 in CRA-S-3228-SB of 2014 and PW15 in other connected appeal) (hereinafter referred to as 'PW15-Tulsi Ram'), lodged an FIR No.173 dated 26.08.2006, under Sections 395, 285 of Indian Penal Code, 1860 (for short (IPC) and Section 25 of Arms Act, 1959, with the Police Station Kanina. He stated that while on his way back home in Car No.HR36-F-8026) at night at about 10:45

PM, he crossed the petrol pump located in the area of Kanina and was intercepted by a Maruti 800 car. Three young-men alighted from the Car, abused him and took him out of his car and made him to sit in their car on the front seat. Two, out of them, occupied the rear seat and both the cars were driven towards Rewari. On way, the car was stopped with a view to shift the complainant to the rear seat and in this process, the complainant took chance to escape and raised alarm when two ladies arrived from the nearby Dhani. All the assailants fled away towards Kanina along with both the cars. The complainant informed the police on telephone and also summoned his friend. After registration of the FIR, statement of Tulsi Ram was recorded, from wherein, he disclosed that his mobile phone, bank passbook and some other documents were also taken away. In supplementary statement, he stated that cash in the sum of ₹2,800/- was also taken away and fire arm was also used during robbery. During investigation, on 28.08.2006 the car was found from a place near the tubewell of one Krishan Kumar of village Kurhawata. Accused Manjeet was arrested on 01.09.2006 when he disclosed, while in custody that on 25.08.2006, he along with co-accused Pawan, Moga alias Anoop, Dholia alias Sunil and Om Parkash had committed the offence. The other accused persons namely, Pawan, Sunil and Anoop were arrested and charge-sheet and

supplementary charge-sheet filed in the competent Court. Upon committal, the Sessions Judge, Narnaul took up the case, framed charges. The prosecution examined 18 witnesses and closed its case. Thereafter, the Court heard the arguments and convicted the appellants as above, while appellant Om Parkash was convicted at a later stage he having been declared proclaimed offender, since after he was arrested on 04.12.2010, i.e. almost after 4 years. All the appeals were heard together since they arose out of the same FIR No.173 dated 26.08.2006, though, the trial in respect of Om Parkash was separated and held at a later point of time.

SUBMISSIONS

Learned counsel for the appellants, Ms. Aditi Girdhar, Amicus Curiae in (CRA-S-153-SB of 2008 and CRA-S-2377-SB of 2007), Ms. Geeta Sharma, Advocate (in CRA-S-2366-SB of 2007) and Mr. Deepak Gupta, Advocate (in CRA-S-3228-SB of 2014), invited my attention to the evidence of PW15-Tulsi Ram-complainant. The counsel submitted that the trial Judge relied upon the evidence regarding the Test Identification (for short 'TI') Parade, which evidence was tendered by the police officers. Trial Judge could not have, in the absence of evidence of the complainant, endeavoured to rely upon the police witnesses for proof of the TI Parade and that was the mistake committed by the

trial Judge. The counsel for the appellants in appeals contended that initially, it was stated by complainant that there were three accused persons, and at a later point of time, it was stated that there were five accused persons. The prosecution miserably failed to discharge the initial burden of proving that the appellants are the same persons who had allegedly stopped the car of the complainant and kidnapped him for committing robbery/dacoity. According to the learned counsel for the appellants, the car was also found after two days and no connection whatsoever of any of the appellants with the recovery of the car by any other nature of evidence including the forensic evidence, was at all established by the prosecution. To sum up, counsel for the appellants, therefore, submitted when the prosecution failed to prove its case, the trial Court erred in recording the moral conviction rather the legal conviction and therefore, prayed for acquittal of the appellants.

On contra, Ms. Dimple Jain, AAG Haryana supported the impugned judgement and order and contended that all the appellants were clearly identified during TI parade and therefore, there was no reason to doubt the truthfulness of the prosecution case. She then, contended that the reasons given by the trial Judge for recording the order of conviction are based on ocular testimony of PW-15 Tulsi Ram, who deposed about the

accused persons having intercepted car and committing robbery/dacoity for which the conviction was rightly recorded by the trial Judge. She, therefore, prayed for the dismissal of the appeals.

CONSIDERATION

With the assistance of the learned counsel for the the rival parties, I have perused the evidence of PW15-Tulsi Ram who is the star witness in this case. Looking into the prosecution case, it is clear that PW15-Tulsi Ram was all alone in the car when he was driving his car at 10:45 PM and was said to have been intercepted by the appellants. The two ladies who had come according to the prosecution, were admittedly not examined either during investigation or in the Court. Therefore, the only evidence against the appellants-accused persons, was only of PW15-Tulsi Ram. It is in this background, I have carefully perused the evidence of PW15-Tulsi Ram. Upon perusal of this, I find that PW15-Tulsi Ram has not at all bothered to identify any of the accused before the Court except the accused Om Parkash. In so far as the other accused persons are concerned, PW15-Tulsi Ram in his evidence did not at all identify them even before the Court as the same persons who had intercepted his car and allegedly committed the robbery/dacoity and kidnapping. It is interesting to note that in his examination-in-chief, he was not even referred to

the memo of TI parade, if he was really brought in the TI parade for identifying the appellants. He being the only witness, who said to have identified the accused persons, the police officers cannot expected to identify the accused as the same persons who had, in the fateful night, intercepted the car of the appellants, since the police personnel were not at the spot where the incident had taken place. The only person who could identify the appellants in the TI parade or in the Court was PW15-Tulsi Ram. It is not clear as to why, though, the prosecution conducted TI parade, memo of TI parade was not got proved from PW15-Tulsi Ram in the Court. Preparation of memo of TI parade is not substantive evidence, but substantiate evidence is the proof thereof by PW15-Tulsi Ram before the trial Court in accordance with law. That is what is absent in this case. In my opinion, this is a serious defect which goes to the root of the case, thereby, showing that the prosecution failed to prove its case before the trial Judge by substantive evidence. The attempt to prove the evidence of TI parade by the police officials was wholly ineffective and of no use. The prosecution erred in relying upon the prove of such a parade from the evidence of police officials. In other words, the prosecution miserably failed to prove its case to identify all the accused who had intercepted the car of the complainant PW15-Tulsi Ram in the night of 25.08.2006.

I have seen the reasons recorded by the trial Judge and as stated earlier, the trial Judge has not considered this crucial aspect of PW15-Tulsi Ram as material witness who did not identify any of the person before the Court. In so far as Om Parkash is concerned, the learned AAG Haryana contended that he was identified in the Court, but then, I find that Om Parkash was arrested on 04.12.2010 while the incident had taken place on 25.08.2006. The law as to identification is well settled particularly when the witness PW15-Tulsi Ram did not have sufficient period of encounter with Om Parkash during the incident and his evidence as to three or five persons is inconsistent. In that view of the matter, it was highly risky to rely upon such incomplete and cryptic evidence by the prosecution in order to record the conviction under Section 395 IPC.

To sum up, I find that the impugned judgment and order in all these cases must be held to be illegal. In the result, I make following order:-

ORDER

CRA-S-153-SB of 2008, CRA-S-2337-SB of 2007, CRA-S-2366-SB of 2007 and CRA-S-3228-SB of 2014 are allowed.

The impugned judgment and order dated 27.09.2007/29.09.2007 passed in Sessions Case No.7 of

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2007 and judgment and order dated 22.07.2013/23.07.2013
passed in Sessions Case No.14 of 2011/2012, by which the
Sessions Judge, Narnaul convicting and sentencing the
appellants under Section 395 IPC, are set aside. Appellants,
in all the cases, are acquitted of the conviction and
sentences under Section 395 IPC awarded to them. Fine, if
paid, be refunded. Bail bonds stand cancelled.

(A.B. CHAUDHARI)
JUDGE

April 29, 2016
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