2024:PHHC:120907-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 05.08.2024
Pronounced on: 12.09.2024

1. CRA-D-118-2019 (O&M)

Shankar ...Appellant

Versus

State of Haryana ...Respondent

2. CRA-D-1107-DB-2018 (O&M)

Ranjit and others ...Appellant

Versus

State of Haryana ...Respondent

3. CRA-S-2982-SB-2018 (O&M)

Rafiq ...Appellant

Versus

State of Haryana ...Respondent

4. CRA-S-3153-SB-2018 (O&M)

Ajay ...Appellant

Versus

State of Haryana ...Respondent

5. CRA-S-3154-SB-2018 (O&M)

Lala Ram .....Appellant

Versus

State of Haryana .....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Harmeet Singh Oberoi, Advocate
for the appellant(s) (in CRA-D-118-DB-2019 and CRA-D-1107-DB-2018).

Mr. Animesh Sharma, Advocate,
and Mr. Shuchi Sodhi, Advocate,
for the appellant(s) (in CRA-D-118-2019, CRA-S-3153-SB -2018 and CRA-S-3154-SB-2018).

Mr. Manish Soni, Advocate,
and Ms. Riffi Birla, Advocate,
for appellant nos. 1 and 2 (in CRA-D-1107-DB-2018).

Mr. Gurfateh Singh Khosa, Advocate (Amicus Curiae)
for the appellant(s) (in CRA-S-2982-SB-2018)
and for appellant No. 3 in CRA-D-1107-DB-2018).

Mr. Manish Dadwal, AAG, Haryana.

SUDHIR SINGH, J.

This judgment shall dispose of CRA-D-118-2019, CRA-D-1107-DB-2018, CRA-S-2982-SB-2018, CRA-S-3153-SB-2018 and CRA-S-3154-SB-2018 together as all the appeals, have arisen out of a common judgment of conviction and order of sentence.

2. Vide judgment and order dated 12/18.07.2018 passed by the learned Additional Sessions Judge, Gurugram, the appellants have been convicted and sentenced to undergo rigorous imprisonment for a period of five years for the offence under Section 412 IPC along with a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo a simple imprisonment for a period of six months. Besides this, appellants, namely, Ranjit, Shankar, Bablu and Gautam have been sentenced to undergo imprisonment for life for the offence under Section 396 IPC along with fine of Rs. 10,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of one year and to further undergo rigorous imprisonment for a period of seven years for the offence

under Section 457 IPC along with a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo a simple imprisonment of 6 months.

3. Vide order dated 31.05.2019, the Lower Court records was called for. The has been received.

4. The case of the prosecution is that the present case was registered on the basis of a telephonic message received from PW3 Inder Singh, complainant, who stated that Laxman Singh, Guard of SLV Security, was murdered by some unknown persons and his dead body had been thrown on the staircase of basement of Nurjahan Export, Plot No.608, Phase 5, Udyog Vihar, Gurugram. Thereafter, complainant Inder Singh moved an application Ex.PA to the effect that he was posted as a Training Officer in SLV Security Service. When Attar Singh, Supervisor, SLV Security Service, was checking guards on duty in the aforesaid premises, he found the side gate of the Company, where Laxman Singh, Guard, was on duty, open. When no response came, then he called an employee of said company, who was sleeping on the upper floor. Thereafter, he went inside the Company and found that Laxman Singh was lying dead in the stairs with his tied hands and legs and his mouth was gagged with some cloth. With regard to the said incident, Attar Singh informed the complainant through telephonic communication. On this information, the complainant reached the spot and informed the police. In the meantime, the owner of the Company reached there. CCTV footage showed that five-six persons had entered the company

by scaling the wall and committed the murder of Laxman Singh, Guard. Tata-ACE white colour vehicle was seen coming and going out from the Company after being loaded with the looted cloths.

5. On the basis of the aforesaid complaint/application, FIR No.433 dated 04.12.2014, under Sections 457, 396, 120-B and 412 IPC was registered at Police Station Udyog Vihar, Gurugram. During investigation, the police had arrested the accused. After investigation, the charge sheet was filed. Charges under Sections 457, 396, 120-B and 412 of IPC were framed against the accused-appellants, to which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined as many as 14 witnesses namely, PW1 – Geeta Devi wife of the deceased, PW2 –Dr. Deepak Mathur, Medical Officer from General Hospital, Gurugram, PW3 – Inder Singh Mann (complainant), PW4 – L/SI Rani Devi, PW5 – Aman Bahl, PW6 – ASI Murari Lal, PW7 –SI Nityanand, PW8 – ASI Girish Kumar Draftsmen, PW9 – HC Ram Pal, PW10 –SI Ravinder, PW11 – SI Krishan Kumar, PW12 – ASI –Sudhir Kumar, PW13 – SI Surender Singh and PW14 –HC Sandeep Kumar. Further, the prosecution produced documentary evidence in the form of Ex. P1 to P-50. Thereafter, statements of the accused-appellants under Section 313 Cr.P.C. were recorded, wherein the entire incriminating evidence was put to them. However, they denied the same and pleaded false implication.

7. The trial Court convicted and sentenced the accused-appellants as noticed above, on the following grounds:-

> "1. The CCTV footage had captured the entire occurrence, showing the manner in which, the deceased was being overpowered by the accused and he was ultimately murdered.
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> 2. The accused-appellants were seen together while lifting the deceased and taking him downstairs. Thereafter, they left the spot one by one. Accused-appellants, Ranjit, Shankar, Bablu and Gautam, were clearly identifiable in the CCTV footage.
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> 3. The recovery, post mortem report, scene of crime, injuries on the deceased person proved the contents of CCTV footage. More so, certificate under Section 65-B of Indian Evidence Act was presented by the genuine source i.e. owner of the Company.
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> 4. PW4 L/SI Rani Devi, corroborated the evidence of PW3 Inder Singh, complainant, that she had received the telephone call from PW3 about the incident at the aforesaid premises."

8. Learned counsel appearing for the appellants have vehemently argued that it was a blind murder case and that the appellants were not named in the FIR. It is further submitted that the appellants were arrested by the police on the basis of a secret information and thereafter, they had been implicated in the case on the basis of their disclosure statements. It is further argued that the findings of the trial Court are based on the CCTV footage, but while producing the said CCTV footage in

evidence, the law laid down by the Hon'ble Supreme Court in **Anvar P.V. Vs. P.K. Basheer and others,** (2014) 10 SCC 473, has not been followed and thus, the finding of guilt recorded by the trial Court, is liable to be set aside.

9. It is further argued that the case is based on circumstantial evidence and there is no direct evidence to prove the complicity of the appellants in the alleged occurrence. All the witnesses are interested witnesses and that the prosecution did not examine any independent witness in support of its case.

10. On the other hand, the learned State counsel, while controverting the submissions made by the learned counsel for the appellants, has vehemently submitted that in the instant case, the CCTV footage was produced and proved on record in terms of Section 65-B of the Evidence Act and the trial Court has specifically found that the accused present in Court were clearly identifiable in the CCTV footage. It is further argued that the accused had suffered disclosure statements before the police, pursuant to which recovery of the stolen articles and the Tempo used in the occurrence, was effected and thus, the confession made under Section 27 of the Evidence Act, to the extent it links the accused-appellant with the occurrence in question, would be admissible in evidence. Thus, a prayer for dismissal of the appeals has been made.

11. We have heard learned counsel for the appellants and have also gone through the records of the case.

12. The following issue would arise for consideration in the present case.

> *"Whether there is sufficient evidence on record, other than CCTV footage, to maintain the finding of conviction recorded by the trial Court?"*

13. The provisions of 65-B of the Indian Evidence Act, 1872, provides for the admissibility of the electronic records. It is stipulated therein that any information contained in an electronic record, which is printed on a paper**,** stored, recorded or copied in optical or magnetic media produced by a computer, shall be deemed to be also a document, if the conditions mentioned in this Section are satisfied.

14. The Hon'ble Supreme Court in ***Anvar P.V.*** (supra) has held that it is only if, the electronic record is duly produced in terms of Section 65-B of the Indian Evidence Act, the question regarding its genuineness would arise for consideration and it is only in this eventuality, that resort can be taken to Section 45-A of the Act. It is further held that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence, if requirements under Section 65-B of the Evidence Act, are not complied with. It was held as under:-

> "14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper,

stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(*i*) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(*ii*) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(*iii*) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(*iv*) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(*a*) There must be a certificate which identifies the electronic record containing the statement;

> (*b*) The certificate must describe the manner in which the electronic record was produced;
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> (*c*) The certificate must furnish the particulars of the device involved in the production of that record;
>
> (*d*) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
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> (*e*) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

15. The learned trial Court has found that the clinching evidence in this case, is the CCTV footage of the place of occurrence. The CCTV footage was produced in a CD by the owner of the Company i.e. PW-5 Aman Bahl. He had also given a certificate under Section 65-B of the Evidence Act. The learned

trial Court has held that the Court had watched the CCTV footage, wherein the accused were clearly visible committing the crime. It was further found that recovery and post mortem report also proved the contents of the CCTV footage. Still further the recovery of the stolen articles and an amount of Rs.1,80,000/- i.e. the sale proceeds of the looted articles, was also held to be sufficient to connect the appellants with the crime.

16. In his testimony PW-5 Aman Bahl stated that the CD did not contain any seal of the Investigating Officer and that the said CD was handed over by him to the Investigating Officer about three years back. In the certificate issued by him, the said witness stated that the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of the activities regularly carried on over that period by the person having lawful control over the use of the computer.

17. Indisputably, in the instant case, the CD was produced on record and the same was proved by PW5-Aman Bahl. The said evidence is secondary evidence, as the original server or the computer in which the CCTV footage was stored, was not produced. As the evidence of CCTV footage was produced as a secondary evidence, no details regarding the server, IP address and the computer from which it was prepared, were brought on record or mentioned in the Certificate under Section 65-B of the Evidence Act. Still further, PW5-Aman Bahl

testifies that the CD had been handed over by him to the Investigating Officer about three years back and the same did not contain any seal of the Investigating Officer. The Honble Supreme Court in **Anvar P.V.'s** case (supra), the certificate under Section 65-B must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence. It was further held that all these safeguards are taken to ensure the source and authenticity, the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

18. In view of the above discussion, we find that there is no proper compliance of Section 65-B(2) and (4) of the Evidence Act.

19. However, now we have to see, whether there is sufficient evidence and material on record, to maintain the conviction of the appellants.

20. It may be noticed that three accused, namely, Manoj, Satender and Ali Hasan, were declared juvenile and further ordered to be sent to the Observation Home, Faridabad. The remaining accused were tried for committing the offence under Sections 396, 457 read with Section 120-B of IPC. Exhibit P-Y, is the FSL report. The said report, in the conclusion part, shows that the DNA profile of blood stains on item nos.6, 7, 8, 12 had

matched with the DNA profile of accused-Manoj. The result of the examination and the conclusion, in the said report, reads thus:-

"***RESULT OF EXAMINATION***

DNA was extracted from all the items and were subjected to Autosomal STR analysis by using Identifier Plus kit. There is no amplification of DNA in item no.4B, 4C, 4F, 9, 10 and 11. DNA profile obtained from item nos.3, 4A, 5, 6, 7, 8, 12 is compared with DNA profile of item no.13, 14, 15, 16, 17, 18, 19.

1. *The allelic pattern of item no.6, 7, 8, 12 matches with the allelic pattern of item no.13.*
2. *However, the allelic pattern of item no.3, 4A and 5 does not match with any other the items.*

"***CONCLUSION***

1. *The Autosomal STR analysis indicates that the DNA profile of blood stains on the source of item no.6 (Shirt), item no.7 (piece of cloth), item no.8 (piece of cloth), item no.12 (piece of polythene) is matching with the DNA profile of Manoj (item no.13) and conclusively proves that they are of same biological origin.*
2. *And the Autosomal STR analysis indicates that the DBA profile of blood stains on the source of item no.3 (blanket), item no.4A (Shirt), item no.5 (Muffler) is not matching with the DNA profile of any of the items mentioned above.*"

21. Accused Manoj (Juvenile) stands convicted by the Principal Magistrate, Juvenile Justice Board, Gurugram, vide judgment/order dated 12.12.2019. He was part of the gang of the accused, who had committed the crime. In the said occurrence, murder of deceased-Laxman Singh was committed.

The defence did not lead any evidence to controvert or disprove the said scientific piece of evidence. The factum of matching of DNA profile of blood stains on various items with that of accused Manoj clearly proves that the said accused had participated in the crime.

22. The offence under Section 396 IPC stipulates that if any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Thus, if anyone of the accused or all of them while committing the dacoity committed murder, then all of them would be liable.

23. In **Shajahan Vs. State,** (2018)13 SCC 347, the Hon'ble Apex Court, while considering the concept of conjointly committing the dacoity, has held as under:-

> **"10.** ..... Section 396 IPC prescribes punishment for dacoity with murder. In the course of commission of dacoity, if a dacoit commits murder, all his companions who are conjointly committing dacoity, are liable to be convicted under Section 396 IPC, although they may have no participation in the murder beyond the fact of participation in the dacoity. The obligation of the court in the matter of imposing the sentence "*death or imprisonment for life*" is in the same sequence both for Sections 302 and 396 IPC. Though the offence under Section 396 IPC is to be viewed with seriousness, for the conviction under Section 396 IPC, larger discretion is

vested with the court insofar as there is possibility of imposing a penalty lesser than death or imprisonment for life for the conviction under Section 396 IPC.

11. Placing reliance upon *Dinesh* v. *State of Rajasthan* (2006) 3 SCC 771, the High Court took the view that commission of murder in the course of dacoity is to be viewed with seriousness. We are also of the view that the offence under Section 396 IPC is to be viewed with seriousness, especially, when the dacoits are armed. But in the case in hand, the accused were not armed. Accused Babu alias Nawab Sahib is alleged to have sat on deceased Muthukrishnan and pressed his nose and mouth and is alleged to have tightened his neck with the rope. The occurrence was of the year 2002. Considering the long lapse of time and the facts and circumstances of the case, the sentence of imprisonment for life is modified as ten years as directed by the trial Court."

24. Still further, another corroborating fact i.e., recovery of the looted articles at the instance of accused Shankar from his rented room, in Dhunduhera village and from accused Ajay from his house at Sileman Nagar, Delhi, and from the house of accused Rafiq, at Shastri Nagar, Delhi, proves that in fact, it was the accused only, who had committed crime leading to the murder of deceased Laxman Singh. Exhibit P.6 is the recovery memo, which has been signed by PW-5- Aman Bahal and Head Constable Sandeep. PW5 in his cross-examination before the trial Court has deposed regarding identification of the seven fabric bundles of cloths. Yet further, recovery of currency notes

amounting to Rs.1.80 lakh at the instance of accused Lala Ram, also corroborates story put forth by the prosecution.

25. In terms of Section 27 of the Evidence Act, if any recovery is made pursuant to statement made by the accused in the police custody, the said part of the statement would be admissible in evidence, to connect the accused with the crime. In the instant case, on the basis of disclosure statements made by accused Shankar, Ajay, Rafiq and Lala Ram, recovery of looted articles (bundles of cloths) and sale proceeds thereof (amounting to Rs.1.80 lakh) was effected. Thus, even if there is non-compliance of Section 65-B of the Evidence Act, the same will not be a ground to set aside the findings of conviction recorded by the trial Court.

26. In **Harpal Singh alias Chhota versus State of Punjab**, reported as **(2017) 1 SCC 734**, the Hon'ble Supreme Court had examined the matter, where call details were not proved in terms of Section 65-B(2) and (4) of the Evidence Act. The Hon'ble Supreme Court had also considered the law laid down by it in **Anvar P.V.'s case (supra)**. It was held that though call details were not admissible in evidence as the same were not proved in terms of Section 65-B(2) and (4) of the Evidence Act, yet overall assessment of material and evidence on record, clearly proved the charges against the accused. In paras 56 to 59 of the judgment it was held as under:-

> "56. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and

stored in a hard disc of the company server, to co-relate the calls made from and to the cellphones involved including those, amongst others recovered from the accused persons, the prosecution has failed to adduce a certificate relatable thereto as required under Section 65-B(4) of the Act. Though the High Court, in its impugned judgment, while dwelling on this aspect, has dismissed the plea of inadmissibility of such call details by observing that all the stipulations contained under Section 65 of the Act had been complied with, in the teeth of the decision of this Court in Anvar P.V. ordaining an inflexible adherence to the enjoinments of Sections 65-B (2) and (4) of the Act, we are unable to sustain this finding. As apparently the prosecution has relied upon the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of Section 65-B(2) had been complied with, in the absence of a certificate under Section 65-B(4), the same has to be held inadmissible in evidence.

57. This Court in Anvar P.V. has held in no uncertain terms that the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read Section 65 of the Act would have to yield thereto. It has been propounded that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of Section 65-B are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to Sections 65-A and 65-B of the Act as above.

58. Be that as it may, on an overall assessment of the entire gamut of evidence, we are of the comprehension that the charges against the accused persons including the appellants, stand proved beyond reasonable doubt even sans the call details. To reiterate, the gravamen of the

imputations levelled against them is that of conspiracy and abduction of the victim pursuant thereto for ransom by detaining him under the threat to cause death or hurt and thereby to compel his father to meet their demand.

59. As it is, as has been exposited by this Court on umpteen occasions, conspiracy requires an act i.e. actus reus and an accompanying mental state i.e. mens rea. Whereas the agreement constitutes the act, the intention to achieve the unlawful objectives of the agreement comprises the required mental state. This Court in Firozuddin Basheeruddin v. State of Kerala held that conspiracy is a clandestine activity and by the sheer nature thereof, an agreement to that effect can rarely be established by direct proof and must be inferred from circumstantial evidence of cooperation between the conspirators. It has been enunciated that conspiracy is not only a substantive crime but also serves as a basis for holding one person liable for the crime of others where application of the usual doctrines of complicity would not render that person liable and thus the test of the role of a co-conspirator would be decisively significant in determining the liability of the others in the face of the supervening fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. Qua the admissibility of evidence, it was proclaimed that loosened standards prevail in a conspiracy trial and contrary to the usual role, in conspiracy prosecutions, any declaration by one conspirator made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. It was thus ruled that conspirators are liable on an agency theory by the statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres."

27. In **Manmeet Singh v. State of Punjab,** (2015) 7 SCC 167, the Hon'ble Apex Court, has held as under:-

> "27. Section 391 IPC defines "dacoity" to be an offence, if five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission of attempt, amount to five or more. In terms of Section 391 IPC in such an eventuality every person so committing, attempting or aiding is said to commit dacoity. Section 396 IPC which comprehends dacoity with murder is a contingency where one of the five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity. In such a case, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to 10 years and would also be liable to pay fine.
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> 28. A combined reading of Sections 391 and 396 IPC would bring to the fore, the essential pre-requisite of joint participation of five or more persons in the commission of the offence of dacoity and if in the course thereof any one of them commits murder, all members of the assembly, would be guilty of dacoity with murder and would be liable to be punished as enjoined thereby.
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> 29. Axiomatically, thus, the indispensable precondition to perceive an offence of dacoity with murder is a participating assembly of five or more persons for the commission of the offence. In the absence of such an assembly, no such offence is made out rendering the conviction therefor of any person in isolation for murder, even if proved,

impermissible in law. To convict such a person of the offence only of murder, if proved otherwise, there ought to be specific charge to that effect.

30. This Court in *Ram Bilas Singh* v. *State of Bihar* [(1964) 1 Cri LJ 573 : (1964) 1 SCR 775] while dilating on the scope and purport of Section 149 IPC had held: (SCR p. 790)

> "... What has been held in this case would apply also to a case where a person is convicted with the aid of Section 149 of the Penal Code instead of Section 34. Thus all the decisions of this Court to which we have referred make it clear that it is competent for a court to come to the conclusion that there was an unlawful assembly of five or more persons, even if less than that number have been convicted by it if (*a*) the charge states that apart from the persons named, several other unidentified persons were also members of the unlawful assembly whose common object was to commit an unlawful act and evidence led to prove this is accepted by the court; (*b*) or that the first information report and the evidence shows such to be the case even though the charge does not state so, (*c*) or that though the charge and the prosecution witnesses named only the acquitted and the convicted accused persons there is other evidence which discloses the existence of named or other persons provided, in cases (*b*) and (*c*), no prejudice has resulted to the convicted person by reason of the omission to mention in the charge that the other unnamed persons had also participated in the offence."

31. Their Lordships thus enunciated, on an exhaustive survey of the judicial renderings on the issue that it is competent for a court

> to come to the conclusion that there had been an unlawful assembly of five or more persons and yet convict a lesser number of persons if the charge stated that, apart from the persons named, several other unidentified persons were also members of the unlawful assembly whose common object was to commit an unlawful act and that the evidence led to prove the same is accepted by the court or if the FIR and the evidence shows such to be the case even though the charge does not state or if though the charge and the prosecution witnesses named only the acquitted and convicted persons, there is other evidence which disclosed the existence of named or other persons provided, that in the last two contingencies, no prejudice would result to the convicted persons by the reason of omission to mention in the charge that the other unnamed persons had also participated in the offence."

28. In **Raju Manjhi v. State of Bihar,** (2019) 12 SCC 784, the Hon'ble Supreme Court has held that though it is true that no confession made by any person while in the custody of police shall be proved against him, yet if such statement reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence,

such statement can be proved against him. It was held as under:-

> **"13.** The other ground urged on behalf of the appellant is that the so-called confessional statement of the appellant has no evidentiary value under law for the reason that it was extracted from the accused under duress by the police. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act:
>
> > "**27. *How much of information received from accused may be proved***.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."
>
> **14.** In the case on hand, before looking at the confessional statement made by the appellant-accused in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes.

> From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/Head of the team of assailants and the crime was executed as per the plan made by him. It also came into light by his confession that the accused broke the doors of the house of the informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act."

29. In the instant case, from the evidence on record, it stands clearly proved that accused-appellant Ranjit, Shankar, Bablu and Gautam (along with co-accused Manoj, Ali Hasssan and Stander – declared juvenile) had committed the murder of the deceased Laxman Singh, who was posted as a security guard on the day of occurrence in the Company. The motive was to commit robbery at the place of occurrence i.e., premises of Noorjahan Export Company owned by PW5- Aman Bahl. The recovery of looted bundles of cloths and vehicle TATA Ace used while committing the said crime coupled with sale proceeds of

the looted articles, clearly connects chain of evidence to hold that it was the accused, who had committed the crime in question. So far as accused Ajay, Rafiq and Lala Ram, are concerned, there is no evidence or material on record to establish that they did not have any knowledge that the articles/cloths sold to them were stolen property. These all incriminating circumstances stand established against accused and the onus was on them to rebut such evidence and incriminating circumstances against them. As noticed above, the defence chose not to lead any evidence in support of innocence of accused.

30. In view of the above, we uphold the finding of conviction recorded by the trial Court, though for the different reasons than the ones recorded by the trial Court. The appellants, who have been released on bail upon suspension of their sentence, be taken into custody forthwith to undergo the remaining sentence.

31. All the appeals are hereby dismissed.

(SUDHIR SINGH)
JUDGE

(KARAMJIT SINGH)
JUDGE

12.09.2024
Himanshu

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