

State Versus Sunny etc.

CHI-887-2023

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**IN THE COURT OF PIYUSH CHAUDHARY, JUDICIAL MAGISTRATE
FIRST CLASS, YAMUNA NAGAR AT JAGADHRI.(UID NO.HR0655).**

CNR No.HRYN030054972023

CIS No.CHI-887/2023

Criminal Case no-887/2023

Date of Institution:30.05.2025

Date of Decision: 23.04.2025



State	Versus	1. Sunny Kumar S/o Chander Bali, R/o Gali no.4, Near Hanuman Temple, Lajpat Nagar, Yamuna Nagar.
		2. Ravi Kumar @ Kalia S/o Sunil, R/o Gali no.3, House no.432, Lajpat Nagar, Yamuna Nagar.
		3. Ram S/o Nand Kishore, R/o Gali no.3, Hari Nagar, Yamuna Nagar.
		4. Bhanu @ Prince S/o Kanhaiya Lal, R/o Gali no.3, Hari Nagar, Yamuna Nagar.

....Accused

FIR No.335 dated 01.05.2023

Under Section: 294,380,427,452 and 506 of IPC

Police Station : City Yamuna Nagar.

Present: Shri Sandeep, Learned APP for the State.
Accused Ravi Kumar, Prince, Sunny and Ram Kumar on bail, represented by Shri Parveen Sharma, Advocate.

JUDGMENT:

The above named accused has been sent by Station House Officer, Police Station, City Yamuna Nagar to face trial for commission of offence punishable under Sections 294,380,427,452 and 506 of IPC.

2. The brief facts as put forth by the prosecution is that the complainant submitted a formal complaint alleging that on 01.05.2023 at around 9:00 AM when the complainant was at his shop at that time he saw four persons were having an argument two females and when the

complainant tired to console the four persons they started arguing with the complainant and at around 9:15 PM they attacked the shop of the complainant and one of the accused forcefully took out Rs.76,700/- and other three accused started thoroughly the bricks on the shop which resultantly cracked the mirrors in the shop. With these submissions complainant prayed that strict legal action be taken against the accused persons.

3. On the basis of the said statement of the Complainant, FIR was got registered, investigation was carried out, statements of the witnesses under Section 161 Cr.P.C. was recorded, accused was arrested and after completion of all the usual formalities of investigation, challan under Section 173 Cr.P.C. was presented in Court for putting the accused on trial.

4. After presentation of Challan in the Court, copy of challan and other documents annexed therewith were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C, 1973.

5. Finding a prima facie case being made out under Sections 294,380,427,452 and 506 of Indian Penal Code, 1860 charges against the accused framed vide order dated 10.09.2024 and the contents of the same were read over and explained to the accused, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution got examined as many as two witnesses, first of all prosecution got examined the complainant Shiv as PW1 who turned hostile and has not supported the prosecution

version of the story.

After that, prosecution got examined HC Andeep Singh as PW2 who proved the arrest form as Ex.PW2/A and Ex.PW2/B and further proved the disclosure statement as Ex.PW2/C and Ex.PW2/D thereafter he proved the recovery as Ex.PW2/E and further proved the identification memo as Ex.PW2/F, thereafter he proved the arrest form of accused Ram and Prince as Ex.PW2/G and Ex.PW2/H respectively and he further proved the disclosure statement as Ex.PW2/I and Ex.PW2/J and the rough site plan as Ex.PW2/K, thereafter he cross-examined wherein he stated that no private witness was joined during the investigation. He also stated that the recovery was effected from one house however, no independent witness was joined during the time of recovery.

7. Thereafter, the learned APP for the State has closed the prosecution evidence on **20.02.2025**.

8. Statement of the accused under Section 313 Cr.P.C. was recorded wherein the accused denied all the allegations and pleaded innocence. However, the accused did not lead any evidence in defence and closed the same by the learned defence counsel.

9. This Court has given a thoughtful consideration to the contentions raised by learned Assistant Public Prosecutor for the State and learned defence counsel and have gone through the record very carefully.

10. In order to prove its case, prosecution has been able to examine only two witnesses however PW2 is the official witness. However, the learned APP for the state requested the Court to declare the

witness PW1 as “Hostile”.

It is relevant to mention here that the term 'hostile witness' does not find any explicit or implicit mention in any Indian laws, be it Indian Evidence Act or the Code of Criminal Procedure or any other law. Historically, the term Hostile Witness seems to have its origin in Common Law. The term 'hostile witness' was first coined in the common law to provide adequate safeguard against the "contrivance of an artful witness" who willfully by hostile evidence "ruin the cause" of the party calling such a witness. The word "hostile witness" is not defined in the Indian Evidence Act, 1872. The draftsmen of the Indian Evidence Act, 1872 were not unanimous with regard to the meaning of the words "adverse", "unwilling", or "hostile", and therefore, in view of the conflict, refrained from using any of those words in the Act. The matter is left entirely to the discretion of the court. A witness is considered adverse when in the opinion of the judge; he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof. The use of words "hostile witness, adverse witnesses, unfavorable witness" had given rise to considerable difficulty and conflict of opinions even under the common law and due to this reason, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that in India the grant of permission to cross-examine his own witness by party is not conditional on the witness being declared adverse or hostile. **[Sat Pal vs. Delhi Administration, AIR 1976 SC 294].**

Under the common law a hostile witness is described as one

who is not desirous of telling the truth at the instance of the party calling him and a unfavourable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves the opposite test. The Supreme Court in **Gura Singh vs. State of Rajasthan, AIR 2001 SC 330**, defined hostile witness as one "who is not desirous of telling the truth at the instance of one party calling him".

In Indian Evidence Act, 1872 the right to cross-examine the witnesses by the party calling him is governed by the Chapter X of the Indian Evidence Act, 1872. Section 142 requires that leading questions cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court. The court can, however, permit leading question as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Section 154 authorises the court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. Permission for cross-examination in terms of S. 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness. Further, the discretion conferred by S. 154 on the court is unqualified and untrammelled, and is apart from any question of 'hostility'. It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency

of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as 'declared hostile', 'declared unfavourable', the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts.

In a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stand thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

The Supreme Court considered the scope of S. 154 in the

case of **Rabindra Kumar Dey vs. State of Orissa**, AIR 1977 SC 170, and following points may be culled out from the decision in this respect:

- i) Section 154 of the Evidence Act is the only provision under which a party calling its own witnesses may claim permission of the Court to cross-examine them.
- ii) The section confers a judicial discretion on the Court to permit cross-examination and does not contain any conditions or principles which may govern the exercise of such discretion. It is, however well settled that the discretion must be judiciously and properly exercised in the interests of justice.
- iii) The law on the subject is well settled that a party will not normally be allowed to cross-examine its own witness and declare the same hostile, unless the Court is satisfied that:
 - a) the statement of the witness exhibits an element of hostility, or
 - b) that he has resiled from a material statement which he made before an earlier authority or
 - c) where the Court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth.
- iv) One of the glaring instances in which the Apex Court sustained the order of the Court in allowing cross-examination was where the witness resiles from a very material statement regarding the manner in which the accused committed the offence.

Section 154 does not in terms or by necessary implication confine the exercise of the power by the Court before the examination-in-

chief is concluded or to any particular stage of the examination of the witness. It may be exercised at any stage of the examination of a witness. It is wide in scope and the discretion is entirely left to the Court to exercise the power when the circumstances demand. The reason for this that a clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief.

vi) Before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing.

vii) Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine its own witnesses cannot be allowed. In other words, a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the Court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth. In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he

gave before the previous authorities. The Court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.

viii) It may be rather difficult to lay down a rule of universal application as to when and in what circumstances the Court will be entitled to exercise its discretion U/s 154 of the Evidence Act and the matter will largely depend on the facts and circumstances of each case and on the satisfaction of the Court on the basis of those circumstances.

ix) Mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him as unreliable witness so as to exclude his evidence from consideration altogether. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. It is open to the court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on a record record.

Ergo, on the basis of above mentioned case law and keeping in view the facts and circumstances of the present case, this Court is of the opinion that though the term hostile does not appear in the Indian Evidence Act, 1872, However, Section 154 of the Indian Evidence Act authorises the Court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The most acceptable meaning of the

term hostile is the person who is not desirous of telling the truth and as such the learned APP for state seeks the declaration of hostility on the basis of the fact that the prosecution witness is not supporting the prosecution version of the story and hence be permitted to ask leading questions and when given the opportunity the prosecution put the question to the witness which might be put in cross-examination by the adverse party, it came on record that the whole testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited and as a matter of prudence the testimony of PW1 is discarded in toto. This Court is also conscious of the view that the maxim “falsus in Uno, falsus in omnibus” does not apply in the Indian Evidence Act however the perusal of the testimony reveals that nothing substantial came on record which can confirmed credibility of the witness.

Thus, the prosecution has failed to bring home the guilt of the accused beyond shadow of reasonable doubts.

11. Since, the complainant failed to support the prosecution case or to utter even a single incriminating word against the accused or to identify him in the Court, the guilt and the identity of the accused remains un-established.

12. At this stage, reliance is placed upon **Satish Mehra Vs. Delhi Administration & Anr (1996 JCC 507)**, wherein it was held by the Hon'ble Apex Court that when the judge is fairly certain, that there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally

completing the procedure to pronounce the conclusion on a future date.

13. Therefore, by giving benefit of doubt, accused **Ravi Kumar, Prince, Sunny and Ram Kumar** have hereby acquitted of the charges framed against them. Their bail bonds and surety bonds shall stand discharged. R.C./D.L. if any attached with the case file be released in the name of registered owner, against proper receipt after the expiry of period of filing of appeal/revision. Bail bonds and surety bonds already furnished by the accused persons are extended bonds under Section 437-A Cr.P.C. File be consigned to the record room after due compliance, complete in all respects.

Pronounced in open court.

Piyush Chaudhary
Judicial Magistrate Ist
Class, Yamuna Nagar at Jagadhri
(UID No. HR0655) 23.04.2025

Note: All the pages of this judgment have been checked and signed by me.

Pronounced in open court.

Piyush Chaudhary
Judicial Magistrate Ist
Class, Yamuna Nagar at Jagadhri
(UID No. HR0655) 23.04.2025

Gaurav