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**(2011) 03 P&H CK 0665**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRA No. 1865-SB of 2002

Balbir Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** March 21, 2011

**Acts Referred:**

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 308, 354, 376, 397, 399

**Hon'ble Judges:** Jora Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Jora Singh, J.

This is an appeal preferred by Appellants Balbir Singh and others challenging the judgment of conviction dated 6.11.2002 and order of sentence dated 8.11.2002 passed by Additional Sessions Judge, Barnala arising out of FIR No. 37 dated 8.5.2000, registered under Sections 399/402 of the Indian Penal Code, Police Station Bhadaur.

2. By the said judgment, they were convicted under Sections 402 IPC and 25 of the Arms Act and sentenced as under:

1 u/s 402 IPC

To undergo rigorous imprisonment for four years and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. u/s 25 of the Arms Act

Accused Balbir Singh, Paramjit Singh and Jagjit Singh were sentenced to undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs. 300/- each and in default of payment of fine to further undergo rigorous imprisonment for one month each. Whereas accused Mohan Khan was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 300/- and in default of payment of fine to undergo further rigorous imprisonment for one month.

3. Prosecution story, in brief, is that on 8.5.2000 police party headed by Jaswinder Singh, Inspector SHO Police Station Bhadaur was present near the bridge of canal of Talewal. Police party was holding a nakabandi then received secret information that Balbir Singh @ Biru, Paramjit Singh @ Pammi, Jagjit Singh and Mohan Khan all residents of village Bihla and Nirmal Singh @ Kala resident of Himmat Pura were present in the ditches near the matti (worship place) on the left side of the canal at a distance of about one and half kilometer and were planning to commit dacoity in some house in the area of village Ramgarh. In case, there is a raid, then they can be apprehended while making preparation for committing dacoity. Taking the information to be credible, a Ruqa was sent to the Police Station on the basis of which formal FIR was recorded. As per secret information, raid was conducted. Four separate parties were constituted. While reaching near the matti in the area of village Talewal, five persons were seen sitting there and with the light of torch they were found to be Balbir Singh, Paramjit Singh, Jagjit Singh, Mohan Khan and Nirmal Singh. On seeing the police party, they tried to fled away. Police party headed by Inspector Jaswinder Singh apprehended Balbir Singh @ Biru and Nirmal Singh. On search of Biru, a country made .12 bore pistol was recovered. Pistol was found to be loaded and was in working condition. After unloading the pistol, one live cartridge was recovered. On search of the accused, one more live cartridge of the same bore was recovered from the right pocket of the pants worn by him. Rough sketch of the pistol was prepared. Pistol was converted into a sealed parcel. Cartridge was also made under sealed parcel. Both the parcels were taken into possession vide separate memo attested by the witnesses. Rough site plan with correct marginal notes was prepared. Ruqa regarding recovery of pistol and the cartridge was sent to the Police Station on the basis of which separate FIR under Arms Act was registered.

4. Police party headed by SI Gamdoor Singh had apprehended Jagjit Singh and on his search, four live cartridge of .12 bore pistol were recovered from the right pocket of the pants worn by him. Cartridges were made into sealed parcel and the same were sealed with seal bearing impression "GS". Sealed parcel was taken into possession vide separate memo attested by witnesses. Regarding recovery of cartridge, Ruqa was sent on the basis of which separate FIR under Arms Act was registered.

5. Police party headed by ASI Jagdeep Singh, apprehended Paramjit Singh accused and on search of the accused, .12 bore country made loaded pistol was recovered.

After unloading the same, one live cartridge was recovered. On further search of the accused, one live cartridge of .12 bore was recovered. Rough sketch of the pistol was prepared and was sealed with seal bearing impression "JS". Cartridge was also made into a separate sealed parcel. Both the parcels were taken into possession vide memos attested by the witnesses. Regarding recovery of pistol and the cartridge, Ruqa was sent on the basis of which FIR under Arms Act was registered.

6. Police party headed by ASI Gurdit Singh, apprehended Mohan Khan accused and on search, a spring actuated knife was recovered from the right fold of the pyjama worn by him. Rough sketch of the knife was prepared and was made into sealed parcel sealed with seal bearing impression "GS". Parcel was taken into possession vide separate memo attested by the witnesses. Regarding recovery of knife, Ruqa was sent on the basis of which formal FIR was registered under the Arms Act. After receipt of report from the Forensic Science Laboratory and on receipt of sanction to lodge prosecution, challan was presented.

7. Accused were charge sheeted under Sections 399 and 402 of the Indian Penal Code to which they pleaded not guilty and claimed trial.

8. In order to substantiate its case, prosecution examined P.W. 1 SI Gamdoor Singh, P.W. 2 ASI Jagdeep Singh, P.W. 4 ASI Gurdit Singh and P.W. 7 Inspector Jaswinder Singh, who are the Investigating Officers in both the cases registered under the Indian Penal Code and under the Arms Act. P.W. 5 H.C. Pardeep Singh, P.W. 6 H.C. Jarnail Singh, P.W. 8 C. Gurdeep Singh and P.W. 10 H.C. Narinder Singh are the recovery witnesses. P.W. 9 C. Karnail Singh tendered his affidavit Ex. PAA, P.W. 11 H.C. Swaran Singh tendered his affidavit Ex. PBB. P.W. 3 Harbans Rai Clerk of SDM office proved the sanction order Ex. PJ, Ex. PK and Ex. DL to launch prosecution against Balbir Singh, Paramjit Singh and Jagjit Singh u/s 25 of the Arms Act.

9. After close of the prosecution evidence, statement of the accused were recorded u/s 313 Code of Criminal Procedure. Accused denied all the prosecution allegations and pleaded to be innocent.

10. Defence version of the accused was that they are the labourers and were working in the grain market Ramgarh. There was theft in the grain market in those days. They were summoned to the Police Station in connection with that theft case. When real culprits were not traceable, then they were involved in this case.

11. Opportunity was given to lead defence evidence but no defence evidence was led.

12. After hearing learned Public Prosecutor for the State, learned Counsel for the Appellants and from the perusal of the evidence on the file, Appellants were convicted and sentenced as stated aforesaid.

13. I have heard learned defense counsel for the Appellants, learned State counsel and have gone through the evidence on the file.

14. Learned defense counsel for the Appellants after arguing for some time when failed to point out any infirmity or illegality in the impugned judgment, then stated that occurrence was in the month of May-2000. Appellants are the first offenders, they belong to poor families. Impugned judgment is not challenged on the point of conviction and requested to take lenient view as the Appellants have already undergone near about four months. According to the story, Appellants were apprehended while planning to commit dacoity. Appellants be directed to undergo imprisonment already undergone.

15. State counsel argued that no doubt occurrence was in the month of May -2000. Appellants are the first offenders but they were planning to commit dacoity. Weapons were also recovered from the Appellants. No objection, if lenient view is taken.

16. No doubt, learned defense counsel for the Appellants has not challenged the impugned judgment on the point of conviction, and only requested for taking lenient view but even then I want to scrutinize the evidence to find out whether the prosecution story inspires confidence or the Appellants were falsely implicated.

17. Evidence on the file shows that police party headed by Inspector SHO P.S. Bhadaur namely Jaswinder Singh was present in the area of village Talewal then received secret information that the Appellants were present near the matti and were planning to commit dacoity in the area of village Ramgarh. As per secret information, different raiding parties were constituted. One party was headed by Inspector Jaswinder Singh, second by SI Gamdoor Singh, third by ASI Jagdeep Singh and forth by ASI Gurdit Singh. Raid was conducted then the Appellants were apprehended while present near matti.

18. Jaswinder Singh Inspector/SI, Gamdoor Singh ASI, Jagdeep Singh and ASI Gurdit Singh appeared in the Court and stated that as per secret information by constituting different party, raid was conducted. Then the Appellants were apprehended while present near the matti. On search of Balbir Singh, one country made pistol alongwith one cartridge was recovered by the police party headed by Inspector Jaswinder Singh. Jagjit Singh was apprehended by the police party headed by SI Gamdoor Singh. Four live cartridges were recovered from him. Paramjit Singh was apprehended by the police party headed by ASI Jagdeep Singh. One country made pistol alongwith two live cartridges was recovered from him. Mohan Khan was apprehended by the police party headed by ASI Gurdit Singh. A spring actuated knife was recovered. Recovered weapons were made into separate sealed parcels. Cartridge was also separately sealed. Weapons were taken into police possession vide different memos. Recovery witnesses also appeared as P.W. 5, P.W. 6, P.W. 8 and P.W. 10. They have supported the version of the Investigating Officers. Weapons were found to be in working condition. In view of the statement of the recovery witnesses and the Investigating Officers, Appellants were rightly convicted by the trial Court.

19. Occurrence was in the month of May-2000. At that time, Balbir Singh was about 30 years old, Nirmal Singh was 30 years old, Jagjit Singh was about 35 years old, Paramjit Singh was 22 years old whereas Mohan Khan was about 23/24 years old. Appellants are the laborers. They are the first offenders and as per custody certificates, they have undergone near about four months each. In [Tara Singh Vs. State of Punjab](#), Appellant was directed to undergo minimum sentence. Appellant was 19 years old and was ordered to be released on probation in view of the Full Bench judgment of this Court in Joginder Singh v. State of Punjab (1980) 82 PLR 585 wherein it was held that probation can be granted even where minimum sentence is prescribed. In 2010 (3) RCR 52 Billu Singh v. State of Punjab minimum sentence was awarded but keeping in view the age of the Appellant and the occurrence was about 13 years ago, Appellant was directed to be released on probation. In 2011 (1) RCR 111 Arshad v. State of Haryana Appellant was convicted u/s 376 IPC. Occurrence was 16/17 years old, conviction was altered from Section 376 IPC to Section 354 IPC. The Appellant was a student and was ordered to be released on probation. In 1990 (1) Cri. L.J. 553 Sohan Singh v. State of Punjab conviction was under Arms Act and keeping in view the age and antecedent of the Appellant, he was ordered to be released on probation. In [Bhupinder Singh Vs. State of Punjab](#), Appellant was convicted u/s 308 IPC and was 73 years old and remained in custody for about three months. He was ordered to be released on probation. In [Masarullah Vs. State of Tamil Nadu](#), Appellant was convicted u/s 452 and 397 IPC. Appellant was 20 years old and belonged to middle class family. He was ordered to be released on probation. But in the present case, all the Appellants have undergone near about four months out of the actual sentence. Appellants are the first offenders and belongs to poor family and ends of justice would be fully met if lenient view is taken. Appellants would become hard criminals if sent to jail to undergo imprisonment as ordered by the trial Court.

20. Keeping in view the antecedents of the Appellants, they are directed to undergo imprisonment already undergone i.e in case of

1. Mohan Khan Four months and nine days
2. Paramjit Singh Four months and eleven days
3. Jagjit Singh Four months and nine days
4. Nirmal Singh Three months and one day and
5. Balbir Singh Four months and eleven days.

For the reasons recorded above, appeal without merit dismissed with modification on the point of sentence.