

(2007) 02 P&H CK 0138

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 1741-SB of 2004

Kamlesh alias Kubra

APPELLANT

Vs

State of Haryana

RESPONDENT

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Date of Decision: Feb. 14, 2007

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 399, 402

Citation: (2007) 2 RCR(Criminal) 689

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: Sameer Sachdeva in Criminal Appeal No. 1741-SB of 2004 None In Criminal Appeal No. 2160-SB of 2004, for the Appellant; A.K. Rathee, Asstt. Advocate General, Haryana, for the Respondent

Final Decision: Dismissed

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### Judgement

Mahesh Grover, J.

This judgment will dispose of the aforementioned two appeals directed against judgment of conviction dated 21.5.2004 and order of sentence dated 22.5.2004 rendered by the Court of the Additional Sessions Judge, Fast Track Court, Karnal (hereinafter described as `the trial Court`) vide which all the Appellants have been convicted and sentenced to undergo seven years rigorous imprisonment for the offence punishable under Sections 399 of the Indian Penal Code, 1860 (for short `the IPC`) and five years rigorous imprisonment for the offence punishable u/s 402 of the IPC. Besides, the Appellants-Arvind Kumar, Ravi Mukhia and Kamlesh have also been held guilty and sentenced to undergo rigorous imprisonment for a period of six months for the commission of offence punishable u/s 25 of the Indian Arms Act, 1959 (for brevity `the Act`). The trial Court ordered that all the sentences shall run

concurrently.

2. The prosecution case rested on the complaint made by Shri Jai Singh, Inspector, CIA, GRP, Ambala Cantt (PW-7), who stated that on 3.9.2003, he along with a police party consisting of Sub-Inspector Dinesh Kumar, Assistant Sub-Inspector Jai Singh, Assistant Sub-Inspector Ramesh Kumar, Constable Surender, Head Constable Ajay Kumar, Constable Balwan Singh, Constable Ramesh Kumar, Constable Joginder Kumar were going from platform No. 2 to platform No. 1 at Railway Station, Karnal in connection with patrolling and checking of the crime. A secret information was received there that five persons were planning to commit a dacoity in the train (Himalyan Queen). They had assembled near the wall of railway godown and if a raid is conducted, they can be caught red handed. Upon this, Shri Jai Singh, Inspector formed two raiding parties. The police party headed by Jai Singh, Inspector reached behind the wall of the godown and heard the conversation among the accused, who were saying that "Arvind and Sushil will enter the bogie from door just after the engine of Himalyan Queen and the remaining will board the bogie from the rear door and if any passenger tried to raise alarm, he should be fired or knife injury should be given and they will snatch the cash and ornaments from all the passengers from the bogie." Upon hearing this conversation, Jai Singh, Inspector gave a signal to the police party and all the accused were apprehended at the spot.

3. On search of all the accused persons, Arvind Kumar was found in possession of one country made pistol of .32 bore along with two cartridges out of which one was alive. Ravi Mukhia was found in possession of one knife. Kamlesh was also found in possession of knife. Sushil Mukhia was armed with a danda and Sunil was armed with an iron patti. All the weapons were taken into possession after preparing their rough sketches. They were then put separately into parcels and were sealed with the seal of 'JS' which was handed over to Assistant Sub-Inspector Ramesh Kumar. All the recovery memos were attested by Assistant Sub-Inspector Jai Singh and Assistant Sub-Inspector Ramesh Lal as witnesses. The case was formally registered vide FIR Exhibit PG-1 and a rough site plan was prepared by Inspector Jai Singh, who conducted the investigation as well. On completion of the investigation, report u/s 173 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') was submitted in the Court of Illaqa Magistrate, Karnal, who, after making compliance of the relevant provisions of the Code of Criminal Procedure committed the case to the Sessions Judge, Karnal as the main offences alleged against the Appellants were exclusively triable by the Court of Sessions.

4. All the Appellants were charge-sheeted for having committed offending punishable under Sections 399 and 402 of the IPC. In addition thereto, Appellants-Arvind Kumar, Kamlesh alias Kubra and Ravi Mukhia were also separately charge-sheeted for the offence punishable u/s 25 of the (Arms) Act.

5. In order to establish the guilt of the Appellants, the prosecution examined PW-1 ASI Ram Murti, PW-2 HC Satish Kumar, PW-3 ASI Ramesh Lal, PW-4 SI Shiv Kumar,

PW-5 Constable Sanjay Pal, PW-6 Narender Kumar, Ahlmad of the Court of District Magistrate, Karnal, and PW-7 Inspector Jai Singh.

6. All the Appellants, in their statements recorded u/s 313 of the Cr.P.C., pleaded innocence and stated that they have been falsely implicated. However, they led no evidence in their defence.

7. The trial Court, after perusing the evidence adduced by the prosecution, convicted and sentenced the Appellants, the details of which have been given hereinabove.

8. Shri Sameer Sachdeva, learned Counsel for the Appellant-Kamlesh alias Kubra contended that there are major discrepancies in the statements of two crucial witnesses, i.e. PW-7 Inspector Jai Singh and PW-3 ASI Ramesh Lal, who were part of the raiding party when the Appellants were allegedly found conspiring and preparing to commit the dacoity. It was pointed out by Shri Sachdeva that the prosecution case is solely based on the testimony of the official witnesses out of whom PW-7 Inspector Jai Singh is the complainant and the Investigating Officer as well. Besides, the statements of both the witnesses reveal discrepancies in the narrative which cast a shadow of doubt on the prosecution version. Since the prosecution has failed to establish the case beyond reasonable doubt, the Appellant-Kamlesh alias Kubra was entitled to acquittal.

9. No one appeared to argue on behalf of the rest of the Appellants. However, since both the appeals arise out of the same judgment and order of sentence, the appeal of other Appellants is also being disposed of as this Court has had the occasion to go through the evidence qua them also.

10. Learned Counsel for the State, on the other hand, contended that the disclosure statements made by the Appellants had led to the recovery of the stolen articles from their houses which prima facie established their involvement in the commission of offence.

11. I have heard learned Counsel for the parties and have perused the record.

12. The statements of PW-7 Inspector Jai Singh and PW-3 ASI Ramesh Lal are at variance with each other in so far as material aspect of the case is concerned. PW-7 Inspector Jai Singh has categorically stated that a goods train was stationed at the place where the Appellants had gathered. He further stated that no loading or unloading of the goods was going on and there was no body except the Appellants, who had assembled at the spot and were preparing to commit dacoity. PW-3 ASI Ramesh Lal has stated that loading and unloading of the goods in the train were going on when the police party had reached the spot pursuant to a secret information. This is a material contradiction which casts an aspersion on the prosecution case. If the loading and unloading of the goods in the train was going on, then there certainly would have been a lot of commotion as the labourers and other persons responsible for the custody of goods would have been present. This

factor could not have been ignored by any of the persons, who were part of the raiding party and this glaring contradiction definitely casts a dent in the version of the prosecution as the whole case was that the raiding party had reached the spot where the Appellants were planning to commit dacoity unhindered and in seclusion. Apart from this, PW-7 Inspector Jai Singh who was the complainant, was the Investigating Officer as well. Even though, ipso facto this cannot be construed to be an irregularity, but the fact that the complainant, who had also investigated the case, would be interested solely in the success of the case and as a consequence, stretching of evidence cannot be ruled out. Besides, there are only official witnesses, who also have contradicted each other in the narrative and in the description of the site.

13. Concededly, every discrepancy in the statements of the witnesses is not to be construed as an improvement in the prosecution version, but if the same is of such a nature as to create a doubt in the mind of the Court, as also if it is of the nature which renders the narrative doubtful, then the benefit of doubt certainly is to go to the accused persons.

14. Learned Counsel for the State has been unable to show anything from the record so as to explain the aforestated material discrepancies. The recovery so effected from the Appellants has not been explained and is actually not relevant to the present case as they were allegedly only preparing to commit the offence. Recovery of one VCR, VCD cassettes, 64 other cassettes, one transistor and one radio pursuant to the disclosure statement of Appellant- Kamlesh alias Kubra has no connection at all with the commission of the offence in the present case.

For the reasons stated above, both the appeals are accepted and the impugned judgment of conviction and order of sentence are set aside. Consequently, the Appellants are acquitted of the charges levelled against them.