

Naresh and others Vs The State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 25, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 148, 149, 186, 332, 353

Citation: (2007) 3 RCR(Criminal) 747

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Baldev Singh, assisted by Mr. Anshul Singh, for the Appellant; Shalini Attri, Assistant Advocate General, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

This appeal is directed against the judgment of conviction and sentence dated 16.2.1995, passed by Additional Sessions

Judge-II, Bhiwani, vide which out of the six accused, namely; Naresh, Ram Kishan, Jaibir, Pirthi Singh, Sombir and Rajesh, except Jaibir, the

other five accused were convicted under Sections 148, 332, 353, 397, 427 and 149 of the Indian Penal Code (hereinafter referred to as the IPC).

Rajesh was also convicted u/s 412 IPC. They were sentenced as under:

All five i.e. Naresh, Ram Kishan,

Pirthi, Sombir and Rajesh to

U/s 148 IPC

undergo rigorous imprisonment for

a period of one year;

All five to undergo rigorous

U/s 332 IPC imprisonment for a period of one

year;

All five to undergo rigorous

U/s 353 IPC imprisonment for a period of six

months;

All five to undergo rigorous

U/s 397 IPC imprisonment for a period of seven

years;

All five to undergo rigorous

U/s 427 IPC imprisonment for a period of six

months; and

Rajesh-accused to undergo

rigorous imprisonment for a period

of seven years and to pay fine of

U/s 412 IPC

Rs. 100/-, in default of payment of

fine, to undergo further rigorous

imprisonment for fifteen days.

2. The factual matrix of the case is that on the morning of 29.9.1992, Shri S.C. Rana the then General Manager, Haryana Roadways, Charkhi-

Dadri along with Kuldeep Singh, Traffic Manager, Hawa Singh, Traffic Sub Inspector and other flying squad was on inspection duty. They

checked one four-wheeler bearing Reg. No. HR19-0425 at about 9.55 a.m. and fined its driver Rs. 500/-. Then at about 11.30 a.m., they also

checked another four-wheeler bearing Reg. No. HR19-0603 carrying 22 unauthorised passengers. The driver of the said vehicle was also

challaned. Their route permits were also taken into possession. Then at about 12.30 p.m, when the aforesaid officers were checking the vehicles at

village Jhhoju-Satnali road near village Dagroli, both the aforesaid four- wheelers along with two other four-wheelers bearing Reg. Nos. HR16-

3023 and HYD-2272 loaded with 50/60 passengers came there. They forced the mini bus and the staff car to stop and attacked them with rods.

Raghibir Singh Sub-Inspector was dragged and beaten up with the rod. Shamsher Singh, driver of the staff car was also dragged on the road. S.C.

Rana and other officials were also beaten up. They also damaged one window of the staff car, torn out the curtains and deflated the tyres of the

driver side. They also snatched away route permit of four-wheeler bearing Reg. No. HR19-0603, one receipt book No. A30 of composition fee

and a sum of Rs. 1800/-, which were collected by the Inspection Team on account of composition fee. They also threatened that they would be

done to death, if their vehicles are challaned. S.C. Rana reported the matter vide application Ex.PG to the police, on the basis of which First

Information Report Ex.PG/1 was registered at Police Station Badhra.

3. During the investigation, the injured persons, Raghubir Singh, S.C. Rana, Hawa Singh and Shamsher Singh were got medico-legally examined on

application Ex.PE. Four-wheelers HR19-0603, HR19-0425 and HR16-3023 were taken into possession. The driving license of Sombir driver of

four-wheeler No. HR19-0603 and R/C of four-wheeler No. HR19-0425 were taken into possession. Investigating Officer also recovered Rs.

1800/- and parts A and B of the route permit of four-wheeler No. HR19-0603, in pursuance of the disclosure statement Ex.PK/III made by

accused Rajesh. One iron rod was taken into possession vide memo Ex.PK/V in pursuance of the disclosure statement Ex.PK/VI made by Ram

Kishan-accused.

4. On completion of the investigation, challan against the accused was presented in the court.

5. On finding prima facie case against the accused, they were charged under Sections 148, 332, 353, 186, 397, 429 read with Section 149 IPC.

Accused Rajesh was also charge-sheeted u/s 412 IPC. They all pleaded not guilty to the charges framed and claimed trial.

6. On commencement of the trial, the prosecution examined PW1 Dr. S.C. Gupta, PW2 Ram Kumar Sub Inspector/Station House Officer, PW3

Subhash Chander Rana, the then General Manager (complainant), PW4 Hawa Singh Traffic Sub Inspector, PW5 Shamsher Singh and PW6

Ghisa Ram Assistant Sub Inspector. After giving up, Raghubir and Kuldeep Singh as unnecessary, the prosecution closed its evidence.

7. When examined u/s 313 of the Code of Criminal Procedure, the accused persons denied all the incriminating circumstances appearing against

them and stated that there was dispute between two four wheelers unions and staff of Haryana Roadways, Charkhi Dadri. As a sequel of it, they

were falsely implicated in this case.

8. During defence, they examined Hari Singh, an occupant of four-wheeler No. HR19-0425 and closed their defence.

9. On scrutiny of the evidence, the trial ended in conviction of the Appellants vide judgment dated 16.2.1995, while acquitting Jaibir-accused. The

convicts were sentenced accordingly. Hence, this appeal.

10. I have heard Shri Baldev Singh, Senior Advocate assisted by Shri Anshul Singh, Advocate, counsel for the Appellants and Ms. Shalini Attri,

Assistant Advocate General appearing for the Respondent-State of Haryana and have also scanned the evidence with their able assistance.

11. At the very outset, Shri Baldev Singh, Senior Advocate, counsel for the Appellants has not assailed the impugned judgment to the extent

whereby the accused-Appellants were convicted under Sections 148, 332, 353, 427 and 149 IPC and in addition to it Rajesh was convicted u/s

412 IPC. However, he has assailed the judgment mainly on the following ground:

Even if the entire prosecution story is accepted, even then the offence u/s 397 IPC is not made out against them.

12. On giving thoughtful consideration to the aforesaid contention, the same appears to be persuasive one and for this the medical evidence

requires to be minutely examined. In this case, Raghbir Singh, Subhash Chander Rana, Hawa Singh and Shamsher Singh were injured at the hands

of the accused. PW1 Dr. S.C. Gupta, Medical Officer, General Hospital, Jagadhri, who medico legally examined the injured on 29.9.1992, found

the following injuries on the person of injured Raghbir Singh:

1. Contusion 6 cm x 4 cm reddish violet in colour lateral to the right eye. Eye was congested red and he was complaining of pain during vision and

opening of the eye. This injury was kept under observation for surgeon's opinion.

2. Complained of pain all over the back. No external injury was visible.

3. Complaining of pain all over the right fore-arm.

Movements were painful, but not restricted.

On the person of Subhash Chander Rana, the following injuries were found:

1. Contusion reddish in colour on the left upper arm on the shoulder joint. Movements were painful, but not restricted. Injury was tender on touch.

Size was 4 cms x 4 cms.

2. Complained of pain all over the abdomen and chest, slight swelling over the left side of the chest. Both injuries were kept under observation.

On the person of Hawa Singh, the following injuries were found:

1. Complained of pain all over the chest and complaining pain in respiratory movements.

2. Contusion on the left side of the forehead lateral to the left eye. Swelling over the left eye brow was present.

PW1 Dr. S.C. Gupta also examined injured Shamsher Singh and found the following injuries on his person:

1. Contusion of reddish violet colour 3 cms x 2 cms on the left side of the forehead above the left eye.

2. Multiple abrasion on the left lower side of the back clotted blood was present. Size varying from 1 cm to 3 cm.

3. Contusion 4 cms x 2 cms on the back of the right shoulder joint. Complaining pain during movements, but not restricted.

On the cursive look of the aforesaid testimony of Dr. S.C. Gupta, it transpires that the injuries suffered by all the injured persons were simple in

nature. Now it becomes essential to reproduce Section 397 IPC, for which the accused have been convicted, it reads as under:

397. Robbery, or dacoity, with attempt to cause death or grievous hurt. - If, at the time of committing robbery or dacoity, the offender uses any

deadly weapon, or causes grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven

years.

On bare reading of the aforesaid Section, the following ingredients are required to be completed for bringing the offence within the ambit of Section

397 IPC; (i) the accused had gone for committing robbery or dacoity, (ii) at the time when they had requisite intention, they used any deadly

weapons or caused grievous hurt to any person or attempted to cause death or grievous hurt to any person.

13. In the instant case, the crux as emanating from the evidence is that Subhash Chander Rana-complainant alongwith other inspection staff was on

routine checking of the vehicles. When the vehicle of the accused persons were checked and their route permits were taken into possession, then

they felt offended and they attacked Subhash Chander Rana, General manager and the other officials accompanying him and caused simple injuries

to them and in that process, they snatched away their documents and the money paid by them. Thus, one thing is clear that their intention was not

to commit any dacoity, but to have their documents and money back, which the complainant had taken at the time when their vehicles were

challaned. As regards other constituent regarding causing grievous hurt, it may be observed from the medical evidence that none of the injuries

found on the persons of the accused was found to be grievous in nature. Though, as per the case set up by the prosecution, the injured persons

were attacked and caused injuries with rods, yet the size and shape of the rods have not been established, so as to determine if the same could be

said to be deadly weapons. Consequently, having been persuaded by the appreciable arguments advanced by Shri Baldev Singh, Senior

Advocate, I observe that no offence u/s 397 IPC or much less dacoity simpliciter is made out against the accused. Therefore, the impugned

judgment deserves to be modified to that extent.

14. No other argument has been urged to assail the judgment. Even otherwise, having scrutinised the evidence on record, it comes out that the

injured witnesses were acting in discharge of their official duties when the Appellants attacked them, caused simple injuries to them and committed

mischief by snatching route permits and money from them. The injured witnesses had no animus against the Appellants to frame them falsely in the

case.

15. As regards the quantum of sentence, though the accused had been convicted and sentenced on 16.2.1995 and much water has flown since

then, yet they created obstruction in the duty of the public servants and caused them injuries, therefore, they should not be allowed to go scot free.

In case, they are dealt with leniently, the public confidence in the administration of justice will be eroded.

16. As a result of aforesaid discussion, the appeal is partly accepted and the Appellants are acquitted of the offence u/s 397 IPC. However, the

conviction and the sentence awarded qua the remaining offences against the Appellants is ordered to be maintained.

17. The Chief Judicial Magistrate, Bhiwani is to ensure the presence of the Appellants for serving remaining part of their sentence.