

(2014) 08 P&H CK 0307

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA Nos. S-1389-SB and S-1531-SB of 2004

Jasbir Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

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

Hon'ble Judges: Kuldip Singh, J

Bench: Single Bench

Advocate: J.S. Virk, Advocate for the Appellant; Dhruv Dayal, Deputy Advocate General, Advocate for the Respondent

Judgement

Kuldip Singh, J.

By this single judgment, I shall dispose of two connected criminal appeals i.e. CRA No. S-1389-SB of 2004 filed by Jasbir Singh @ Javri @ Jabbar Singh, Shamsher Singh @ Chhammi, Sumer and Raj Kumar @ Raju and CRA No. S-1531-SB of 2004 filed by Jagpal and Rattan Singh. All the six appellants were convicted by learned Addl. Sessions Judge, Fast Track Court, Karnal for the offences under Sections 399 and 402 IPC, whereas accused Jasbir Singh @ Javri @ Jabbar Singh and Jagpal were also convicted u/s 25 of the Arms Act. All the accused were sentenced to undergo rigorous imprisonment for seven years each u/s 399 IPC. They were also sentenced to undergo rigorous imprisonment for five years each u/s 402 IPC. Accused Jasbir Singh @ Javri @ Jabbar Singh and Jagpal Singh were also sentenced to undergo rigorous imprisonment for six months each u/s 25 of the Arms Act. All the sentences were directed to run concurrently.

2. No one has appeared on behalf of the appellants Jagpal and Rattan Singh. On the asking of the Court, Mr. J.S. Virk, Advocate has argued the case on behalf of all the

accused-appellants.

3. The prosecution story is that on 26.06.2003 Sube Singh, Assistant Sub Inspector, CIA-II, Karnal alongwith a police party consisting of Head Constable Ram Singh, Head Constable Azad Singh, Constable Satish Kumar, Constable Arvind, Constable Mahender Singh and Constable Rattan Singh was present in Sector-4, Karnal in connection with crime detection. In the meanwhile, a secret information was received to the effect that accused Jasbir Singh @ Javri @ Jabbar Singh, Shamsher Singh @ Chhammi, Jagpal, Rattan Singh, Raj Kumar @ Raju and Sumer Singh armed with deadly weapons were planning to commit dacoity at the liquor shop at Meerut Road, Karnal. On receiving the secret information, ASI Sube Singh formed three raiding parties, one headed by himself and other two headed by H.C. Ram Singh and H.C. Randhir Singh. When the police parties reached near the platform of the electrical poles of the power supply near Ganda Nala (cesspit) Sector-5, Karnal, ASI Sube Singh over heard the conversation of accused wearing blue shirt. One of the person/accused was giving instructions to other accused to the effect that at night they will commit dacoity at the liquor shop situated at Meerut Road, Karnal. ASI Sube Singh further over heard that he and his co-accused Jagpal will keep the pistol loaded, Shamsher Singh @ Chhammi will keep himself armed with knife. Sumer Singh armed with saria (iron rod) will catch hold the salesman. Rattan Singh and Raj Kumar @ Raju will snatch the amount. It was further over heard that after committing the crime, Rattan Singh and Raj Kumar @ Raju will go ahead along with the cash whereas the other persons will follow them. The police parties surrounded the accused from three sides. After hearing the conversation of the accused, ASI Sube Singh gave a warning, calling upon the accused to come out and surrender before the police. Thereafter, two accused Rattan Singh and Raj Kumar @ Raju ran away from the spot whereas the other accused were apprehended along with their respective weapons.

4. The search of Jasbir Singh @ Javri @ Jabbar Singh and Jagpal resulting in the recovery of one country-made pistol each of .315 bore. One cartridge each was found loaded in the said pistols and one extra live cartridge each was also recovered from their pockets. The said pistols were taken into possession through different recovery memos and rough sketches of pistols were prepared.

5. The personal search of Shamsher Singh @ Chhammi led to the recovery of one knife, which was taken into possession and rough sketch thereof was also prepared. One iron rod (saria) was recovered from Sumer Singh. The same was also taken into possession.

6. ASI Sube Singh then sent the ruqa (Ex. PH) to the police station, where the formal FIR (Ex. PH/1) was registered. Rough site plan (Ex. PJ) of the place of occurrence was also prepared. During the investigation, the scaled site plan (Ex. PC) was also got prepared. Later on, accused Rattan Singh and Raj Kumar @ Raju were arrested in some other case and were taken into custody, in this case on 29.06.2003. Nothing

was recovered from them.

7. During the course of investigation, the country-made pistols were got tested from H.C. Satish Kumar, Armourer and he submitted reports(Ex. PA/1 and PB/1). After the completion of the investigation, the challan was presented in the court.

8. All the accused were charge sheeted under Sections 399 and 402, whereas accused Jasbir Singh @ Javri @ Jabbar Singh and Jagpal were also separately charge-sheeted u/s 25 of the Arms Act. Accused pleaded not guilty to the charges and claimed trial.

9. In support of its case, the prosecution examined PW1 H.C. Satish Kumar, Armourer, PW2 Constable Prem Kumar, PW3 Constable Balwant Singh, PW4 H.C. Ram Singh, PW5 Narinder Kumar, Ahlmad to District Magistrate, Karnal and PW6 ASI Sube Singh and closed its evidence.

10. When examined u/s 313 Cr.P.C., accused claimed that they are innocent and have been falsely implicated in this case. Accused Jasbir Singh @ Javri @ Jabbar Singh claimed that he has been arrested on 26.06.2003 at about 4.30 a.m. from village Manjura from a liquor shop, where he was working.

11. Accused Shamsher Singh @ Chhammi claimed that he was arrested on 26.06.2003 at about 4.00 a.m. from his village Dadupur, District Karnal.

12. Accused Sumer Singh claimed that he was forcibly arrested from his house at Vidyanand Colony, Panipat on 27.06.2003 at 1.00 p.m.

13. Accused Jagpal claimed that he was arrested from Govt. Girls College, Karnal, where he was working as Security Guard. He was on duty from 12.00 noon to 8.00 p.m. on 26.06.2003. When he was arrested, one Sushil Kumar Rana, Security Guard was present at the time of his arrest.

14. Accused Rattan Singh claimed that he was arrested from his village by the police.

15. Accused Raj Kumar @ Raju claimed that he was forcibly arrested by the police from village Dadupur, District Karnal on 27.06.2003 at about 5.00 p.m., when he was going to see his friend.

16. In defence, accused examined Sushil Kumar Rana, Security Guard as DW1.

17. After hearing learned Public Prosecutor, learned counsel for the accused and going through the evidence, learned Addl. Sessions Judge, Fast Track Court, Karnal, convicted and sentenced the accused aforesaid.

18. First of all, an apparent defect is found in the order of sentence passed by the trial court. It comes out that under Sections 399 and 402 IPC, fine was to be imposed in addition to the sentence but no such fine has been imposed. u/s 25 of the Arms Act, the sentence awarded by the trial court is rigorous imprisonment for six months, whereas u/s 25 of the Arms Act, minimum sentence for possession of

prohibited bore arm is not less than five years and fine was also to be imposed in addition to the substantive sentence. However, this was not done. The State has not filed any appeal. Therefore, at this stage, the sentence even otherwise cannot be enhanced.

19. Coming to the merits of the case, first of all, I will take up the cases of Rattan Singh and Raj Kumar @ Raju, who are stated to have run away from the spot. A perusal of the ruqa shows that according to ASI Sube Singh, their name came to be later on known as Rattan Singh and Raj Kumar @ Raju. No description of said accused was given in the ruqa. Only colour of their clothes was mentioned. None of the police official was previously known to these accused. Probably their names were supplied by the co-accused. However, even after their arrest, no identification parade was arranged to get them identified from the witnesses. Their identification in the Court is not sufficient to establish their identity. Nothing was recovered from them in this case. Therefore, merely from the statements of PW4 H.C. Ram Singh and PW6 ASI Sube Singh and their identification in the Court, it cannot be said that they are the same persons, who ran away from the spot.

20. The net result is that on account of doubt of identity, Rattan Singh and Raj Kumar @ Raju are entitled to be acquitted.

21. Now, coming to the case of the remaining accused, it comes out that ASI Sube Singh while appearing as PW6 reiterated the prosecution story as stated above. He also proved the recovery of .315 bore country-made pistols from Jasbir Singh @ Javri @ Jabbar Singh and Jagpal. He also proved the recovery of knife from Shamsher Singh @ Chhammi and one iron rod (saria) from Sumer.

22. The statement of H.C. Ram Singh, PW4 is also to the same effect.

23. Learned counsel for the appellants has argued that according to statement of PW6 ASI Sube Singh, after receiving the secret information, the police force formed three police parties. First party was headed by ASI Sube Singh, second party was headed by H.C. Ram Singh and third party was headed by H.C. Randhir Singh. The party headed by H.C. Ram Singh was directed to conduct raid from the Eastern side. The party headed by H.C. Randhir Singh was directed to conduct raid from the Western side and the third police party headed by ASI Sube Singh was directed to conduct raid from the Northern side. On the fourth side, there was a drain. Then it is alleged by ASI Sube Singh that he over heard conversation of the accused, in which they were planning to commit dacoity on the liquor shop, situated at Meerut Road, Karnal. One of the accused gave instructions that accused Jagpal will keep the pistol loaded, Shamsher Singh @ Chhammi will keep himself armed with knife, Sumer armed with saria will catch hold the salesman and Rattan Singh and Raj Kumar @ Raju will snatch the amount. Accused were further over heard saying that after committing the crime, Rattan Singh and Raj Kumar @ Raju will go ahead along with the cash whereas other persons will follow them. Thereafter, ASI Sube Singh gave a

warning to the accused to come out, on which, two accused Rattan Singh and Raj Kumar @ Raju ran away whereas remaining accused were apprehended at the spot.

24. Learned counsel for the appellants has argued that the prosecution story regarding over hearing by the police party cannot be believed. He has referred to the cross-examination of ASI Sube Singh, who has stated that when he over heard the conversation, the police party was at the distance of twenty feet. He has further stated that accused were sitting near the Kikkar trees, the height of which were three feet. Accused were not visible as they were sitting on the ground. There were so many Kikkar trees at the spot. The distance between Kikkar trees was 1-1.5".

25. H.C. Ram Singh on the other hand stated that when they over heard the conversation of the accused, they were at the distance of twenty five paces from the accused. The cross-examination of witnesses further shows that they apprehended the accused at 1.00 p.m.

26. I am of the view that from the statement of ASI Sube Singh and H.C. Ram Singh, it is clear that accused Jasbir Singh @ Javri @ Jabbar Singh, Jagpal, Shamsher Singh @ Chhammi and Sumer were apprehended from the spot with the arms, whereas other two persons, whose identity could not be established, ran away from the spot.

27. The statements of ASI Sube Singh and H.C. Ram Singh cannot be believed to the effect that they had over heard the conversation of the accused, details of which are given above to show that accused were discussing their plan in detail to commit dacoity on the liquor shop, situated at Meerut Road, Karnal. It is apparently exaggeration and padding on the part of Investigating Officer.

28. Now it is to be examined whether if the said part of the evidence is disbelieved, then whether from the remaining evidence and circumstances, it is made out that accused were planning to commit dacoity? I find the reply in affirmative. First of all, a perusal of site plan shows that the place where the accused had gathered with weapons, though falls near Sector 4-5, Karnal, but it is lying vacant and uninhabited. There were many Kikkar trees at the spot and there is cesspit (ganda nala) adjoining the place. Accused were carrying arms. The fact that accused were sitting by the side of cesspit at inhabited place during noon time carrying two.315 bore country-made pistols, one iron rod and one knife, goes to show that accused were certainly planning to commit dacoity. It is quite possible that the police might have heard some murmuring and they exaggerated the same to allege that they had over heard the conversation in detail. The recovery memo of the knife shows that it was not an ordinary knife. Blade of the knife was 8.7". The width of the blade was 1.1" and the handle was of 4.2". The knife was apparently meant for criminal activities. The accused have not explained as to why they had gathered with arms at such a place. Moreover, it comes out that accused Jasbir Singh @ Javri @ Jabbar Singh and Shamsher Singh @ Chhammi are resident of village Dadupur, District Karnal, whereas accused Sumer belongs to Panipat. Accused Jagpal belongs to District

Saharanpur in Uttar Pradesh. All the accused claimed that they were arrested from different places as stated above. However, there is no reason for the police to conduct raid so as to arrest them from different places, if the accused were not involved in any crime.

29. The statement of defence witness Sushil Kumar Rana as DW1 to the effect that accused Jagpal was arrested from Govt. Girls College, Karnal on 26.06.2003 at 12.30 p.m. by the police cannot be believed. If it was so and accused Jagpal was on security duty, there can be record of Govt. Girls College, Karnal that he was performing his duty and there must be record of his absence or some other record to show that he was taken away by the police. Therefore, the fact that accused belong to different places and that they had gathered at secluded place with arms, goes to show that accused were planning to commit dacoity.

30. Learned counsel for the appellants argued that no independent witness was joined in this case.

31. I am of the view that the police on receiving secret information, immediately proceeded to the spot, where the accused had gathered with weapons. Had the police wasted time in arranging for the independent witness, accused might have slipped away. In these circumstances, the police party was not required to make effort to join any independent witness.

32. Learned counsel for the appellants has relied upon the authorities of Hon"ble the Supreme Court in case of Birbal B. Chouhan and Another Vs. State of Chhattisgarh etc. etc., and this Court in cases "Mahavir vs. State of Haryana", 2010 (6) RCR (Criminal) 3073 and Bagga alias Banu Vs. State of Haryana,

33. A perusal of the authorities shows that it depends upon the direct/indirect evidences of the prosecution or from the attending circumstances to infer whether accused had assembled to make preparation to commit dacoity?

34. In the present case, after perusal of evidence, the trial court rightly came to the conclusion that accused had gathered to commit the dacoity. The identity of two of the accused, who absconded from the spot could not be established but this fact is established that two other persons were present at the spot. Therefore, accused Jasbir Singh @ Javri @ Jabbar Singh, Jagpal, Shamsher Singh @ Chhammi and Sumer were rightly convicted under Sections 399 and 402 IPC and accused Jasbir Singh @ Javri @ Jabbar Singh and Jagpal Singh were convicted and sentenced u/s 25 of the Arms Act.

35. Learned counsel for the appellants has prayed for leniency in the sentence.

36. As pointed out earlier, the fine was not imposed under Sections 399 and 402 IPC by the trial court and even the minimum sentence u/s 25 of the Arms Act has not been awarded, for which nothing can be done at this stage.

37. Keeping in view the fact that the crime related to the year 2003 and now eleven years have elapsed and keeping in view the facts and circumstances, the sentence of accused u/s 399 is reduced from seven years to five years whereas the sentences awarded under Sections 402 IPC and 25 of the Arms Act are maintained.

38. As a result of foregoing discussion, the appeal qua Rattan Singh and Raj Kumar @ Raju is allowed whereas the appeal of remaining accused is dismissed with the modification in the sentence recorded above. Accused Jasbir Singh @ Javri @ Jabbar Singh, Jagpal, Shamsher Singh @ Chhammi and Sumer, who are on bail are ordered to be arrested and committed to the jail to undergo remaining part of sentence.