

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRA-S-1983-SB of 2002 (O&M)

Mannu Singh

...Appellant

Versus

State of Haryana

...Respondent

(2) CRA-S-945-SBA of 2004 (O&M)

State of Haryana

...Appellant

Versus

Sanjay @ Sanju

...Respondent

DATE OF DECISION: 26.08.2015

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Shashikant Gupta, Advocate for the appellant
(in CRA-S-1983-SB-2002).

Mr. Arun Luthra, AAG, Haryana.

Mr. Luvinder Sofat, Advocate/amicus curiae
for the respondent (in CRA-S945-SBA-2004).

Jitendra Chauhan, J.

The aforementioned two appeals are being decided by way of this common judgment, as the same have been arisen out of the same case/FIR. However, the facts are being derived from CRA-S-1983-SB-2002.

2. The appellant/accused has filed this criminal appeal assailing his judgment of conviction dated 24.10.2002 and order of sentence dated 26.10.2002, passed by the learned Additional Sessions Judge, Gurgaon. The appellant was convicted and sentenced to undergo rigorous imprisonment for 05 years and to pay a fine of Rs. 2000/- under Section 392 of the Indian Penal Code (for short 'IPC'), in default of payment of fine, to further undergo RI for 06 months and he was further sentenced to undergo RI for 07 years under Section 397 IPC. However, the appellant was acquitted of the charge framed under Section 25 of the Arms Act.

3. The case of the prosecution as culled out from the judgment of the Trial Court is as under:-

“The case of the prosecution is that complainant Mahabir Singh on 23.08.2001 was going to village Kheri Sultan on his motorcycle bearing No. DL3SU-2553. At about 1.30 pm, when he after transacting a turn to village Gugana had reached near a culvert, three persons travelling in Maruti car had put the car close to his motorcycle in such a manner that he had to stop his motorcycle. Immediately two persons came out of the car. They were holding country made pistols in their hands. One of them had snatched his motorcycle and purse kept in the back pocket of his pant. The other assailant while threatening to shoot him compelled the complainant to part with his gold ring, wrist watch and cash amount of Rs. 3000/-. The third assailant kept sitting in the car and drove away one of the two assailants who had looted the

property with him in the car. The third one followed the car on the looted motorcycle. On hearing noise, Om Parkash son of Mukh Ram was attracted to the spot. He informed the complainant that the culprits were known to him. He also disclosed their names to be Mannu, Sanju and Manish. The complainant reported the matter to police and the present case under Sections 392, 397 IPC and Section 25 of the Arms Act was then registered. During investigation, Mannu Singh accused was arrested on 04.09.2001 and the looted motorcycle was recovered from his possession. Also a country made pistol and two live cartridges of .315 bore were recovered from his personal search. A sketch of the recovered pistol was prepared. The pistol, live cartridges and the motorcycle were taken into possession vide recovery memos. Accused Mannu Singh was interrogated whereupon he volunteered a disclosure statement confessing his involvement in the present case as also in two other incidents of robbery. The pistol and the cartridges were tested by Gurdial Singh, Armorer who found the pistol in working condition and the cartridges to be alive. The complainant on 06.09.2001 had identified the recovered motorcycle to be his looted property. After completion of necessary investigation, charge sheet was submitted in Court against accused Mannu as the police had been unsuccessful in apprehending the other accused.”

4. On presentation of challan, the trial Court finding prima facie evidence against accused-appellant, framed charge for the offences under Sections 392 and 397 of IPC and Section 25 of Arms Act. The accused person pleaded 'not guilty' to the above charges

and claimed trial.

5. In support of its case, the prosecution examined the following witnesses:-

PW-1, Naresh Kumar, Draftsman, who prepared the scaled site plan Ex.PA of the place of occurrence;

PW-2, Mahabir Singh, the complainant himself stepped into the witness box and corroborated the entire prosecution story as set out by the investigating agency;

PW-3, Om Parkash, an eye witness deposed regarding the occurrence and testified the identity of the accused/appellant;

PW-4, Gurdial Singh, Armorer had proved his report Ex.PE to the effect that the recovery pistol and cartridges were in working condition;

PW-5, SI Rajiv Kumar deposed regarding preparation of challan against the accused/appellant;

PW-6, ASI Kanwar Singh, testified the application Ex.PB, arrest of the accused and also the recovery from the accused/appellant;

PW-7, SI Shamsher Singh, the Investigating Officer corroborated the entire prosecution story and testified the whole occurrence.

6. The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication.

However, he did not lead any evidence in his defence.

7. After hearing the Public Prosecutor for the State, the counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

8. Feeling aggrieved, against the judgment of conviction and order of sentence delivered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 13.12.2002. Criminal Appeal No.S-945-SBA of 2004, titled as State of Haryana Vs. Sanjay @ Sanju, was admitted by this Court on 26.04.2004. The sentence of accused/appellant Mannu Singh was suspended on 10.01.2005.

9. Learned counsel for the appellant/accused has contended that the appellant/accused have been falsely implicated in the present case. The learned trial Court has grossly erred on the facts as well as in law in convicting the appellant/accused. The star witness of the occurrence i.e. Complainant PW-2 Mahabir Singh had stated that on 23.08.2001, he was going on his motorcycle from his village to the village of his maternal uncle. When he reached near Gugana crossing, one maruti car came from behind, overtook his motorcycle and stopped the car in such a manner that he forced to stop his motorcycle. Thereafter, three persons sitting in the car came out, out of the three, two were carrying pistols in their hands and one was

driving the car. Both the persons pointed their guns towards the complainant and after hurling abuses, snatched away his purse, a wrist watch and some documents kept by him in his pocket. The whole incident was witnessed by PW-3, Om Parkash, who knew all the three accused personally and disclosed their names to the complainant. The learned counsel for the appellant refers to the testimony of PW-3, Om Parkash, wherein he in his cross examination had stated that name of the accused were told to him by the complainant PW-2, Mahabir Singh, therefore, the learned counsel has contended that there are contradictions in the statements of both the witnesses.

10. It is next contended that as per PW-2, Mahabir Singh, he along with PW-3, Om Parkash, went to the police station and lodged the complaint Ex.PB on the same day of incident i.e. 23.08.2001 but in his cross examination, it is nowhere stated that PW-3, Om Parkash accompanied him to the police station. Furthermore, PW-2 Mahabir Singh in his cross examination stated that on 04.09.2001, he along with PW-3, Om Parkash, went to the police station Farrukh Nagar, where accused/appellant Mannu Singh was present, however, PW-3, in his cross examination had stated that he do not know whether the accused was arrested by the police or when the accused Mannu was arrested, he was not called in the police station.

11. The learned counsel has further submitted that as per

PW-2, Mahabir Singh, he had stated that all the accused came out of the car but in his complaint submitted to the police, he had stated that only two out of the three came out of the car. Further, he had stated that accused/appellant Mannu snatched his motorcycle and fled towards Barera, however, in his complaint Ex.PB, it was mentioned that one accused after snatching motorcycle ran towards Siwari. The learned counsel further refers to the other two shadow witnesses i.e. PW-6, ASI Kanwar Singh and PW-7, SI Shamsheer Singh, the Investigating Officer and has submitted that PW6, ASI Kanwar Singh in his examination in chief had stated that on 23.08.2001, he along with HC Randhir Singh and Constable Jagdish was present at Mussaidpur Chowk Farrukh Nagar and complainant/PW-2, Mahabir Singh son of Malkahan Singh met him there and submitted an application Ex.PB, whereas, as per the complainant, he had submitted his complaint Ex.PB in the police station. As per testimony of PW-6, accused/appellant Mannu Singh was intercepted at naka, whereas, as per PW-7, accused Mannu was arrested on the basis of raid which was conducted on the basis of secret information.

12. The learned counsel for the appellant has contended that no independent witness was jointed during the arrest of accused/appellant Mannu Singh. Furthermore, the pistol which was stated to be recovered from the appellant Mannu was not sealed

when it was given to PW-4, Gurdial Singh, Armorer, therefore, the learned counsel has submitted that the whole prosecution story was based on incredible evidence. PW-3, Om Parkash is maternal uncle of PW-2, Mahabir, therefore, both the witnesses were the interested witnesses of the prosecution. No independent witness was joined in the investigation. There were material contradictions in the statements of prosecution witnesses i.e. PW-2, PW-3, PW-6 and P-7 and the accused/appellant has been falsely involved in the instant case by making a false story by the investigating agency.

13. In support of his contentions, the learned counsel has cited Nanhe Vs. State, 2014(4) Crimes 411 and Pritam Vs. State of Haryana, 2003(2) RCR (Criminal) 839.

14. On the other hand, the learned State counsel has submitted that the prosecution has fully proved its case against the accused/appellant and he has been rightly convicted and sentenced by the trial Court. He has submitted that admittedly the motorcycle, snatched away by the accused and country made pistol were recovered from the possession of the accused/appellant. There is disclosure statement to that effect. PW-2, Mahabir Singh, the complainant had also identify his motorcycle in the police station which was recovered from the conscious possession of the accused/appellant Mannu. All the prosecution witnesses had duly corroborated the entire prosecution story and on the basis of their

evidence, nothing has been left which can faint the prosecution story. The link evidence is complete. Moreover, the trial Court had already given the benefit of doubt to the accused/appellant by acquitting him from the charge levelled against him under the Arms Act, therefore, the present appeal deserves to be dismissed.

15. This Court has heard the rival contentions of learned counsel for the parties and has carefully gone through the record of the case.

16. The entire stand of the prosecution is based upon the testimony of PW-2, Mahabir Singh, the complainant, PW-3, Om Parkash, an eye witness and official witnesses, PW-6, ASI Kanwar Singh and PW-7, SI Shamsher Singh. The occurrence in the present case took place on 23.08.2001, when PW-2, the complainant, Mahabir Singh, had been going on his motorcycle to village Kheri Sultan. At about 1.30 p.m., when he reached near a turn to village Gugana, three persons travelling in a Maruti car had put the car close to his motorcycle and stopped him. Thereafter, two of them alighted from the car, holding pistols in their hands and snatched away the motorcycle, purse, gold ring, wrist watch and cash amount of Rs.3000/- from the complainant and the duo fled away from the spot in the car and one of them, on the motorcycle. The incident was testified by PW-2, in his testimony by stating that accused persons came from behind while he was going to the village of his maternal

uncle and they stopped him. The accused persons after giving threats to him looted the motorcycle and other articles from him and fled away from the spot. He had stated that the whole occurrence was witnessed by one PW-3, Om Parkash and the accused persons were known to him personally. Said Om Parkash had disclosed to him their names, parentage etc., and PW-2 had not known to them earlier. It was for the first time when he knew about them from PW-3, Om Parkash.

17. Further, as per the testimony of PW-3, Om Parkash an eye witness, he had stated that he had noticed the occurrence while he was going to his village and testified that the present accused/appellant had snatched away the motorcycle from the complainant. However, the stand taken by him in his cross examination that the name of the accused, their parentage and village were told to him by the complainant, Mahabir Singh, PW-2, is altogether different from the stand taken by PW-2, Mahabir Singh. Furthermore, PW-2, Mahabir Singh, had stated that on 04.09.2001, he along with PW-3 Om Parkash went to the police station Farrukh Nagar, where accused/appellant Mannu was present and his motorcycle was also there in the police station, whereas, PW-3 Om Parkash had categorically stated in his cross examination that when accused Mannu was arrested, he was not called in the police station nor the accused Mannu present in Court was shown to him.

Moreover, PW-2 and PW-3 were stated to be related to each other. It is highly improbable that when the occurrence took place, only PW3 Om Parkash was there and witnessed the occurrence. The presence of Om Parkash is doubtful in the present set of circumstances of the case.

18. PW-6, ASI Kanwar Singh had stated that on 23.08.2001, he along with HC Randhir Singh and Constable Jagdish was present at Mussaidpur Chowk, Farrukh Nangar where PW-2, Mahabir Singh met him and submitted his application Ex.PB and he (PW-6) after endorsement on the application, forwarded to the same to the police station through Constable Jagdish for registration of the case. He had further stated that on 04.09.2001, he along with HC Randhir Singh, SHO Shamsheer Singh was present near a petrol pump on Jhajjar Road on Farrukh Nagar in connection with patrolling. On the basis of secret information, they held a naka and intercepted one motorcyclist. The said motorcyclist disclosed his name as Mannu and on his personal search, one country made pistol loaded with one live cartridge of .315 bore were recovered. Whereas, as per testimony of PW-7, Shamsheer Singh, the Investigating Officer, accused/appellant Mannu was arrested during raid, which was got conducted on the basis of secret information. He had admitted that in his cross examination that many persons were present at the petrol pump from where the accused/appellant Mannu was arrested,

however, no person was joined as witness during the raid and at the time of arrest of the accused.

19. The accused/appellant Mannu was acquitted of the charge framed against him under Section 25 of the Arms Act by the trial Court by giving him benefit of doubt about the alleged recovery of pistol and cartridges. Once the recovery of weapon of offence was not proved against him, which as per the material witnesses i.e. PW-2 and PW-3 was issued during commission of crime, his conviction under Section 392 and 397 is not sustainable. There is no evidence on record fastening the present appellant/accused with the commission of crime. This aspect of the case appears to have escaped complete attention of learned trial Court. Thus, it becomes evident that the conviction of the appellant/accused, under Section 392 and 397 IPC, was not supported by the evidence on record. There were material discrepancies in the star witnesses which fainted the entire version of the prosecution. The false recovery of motorcycle upon the accused cannot be ruled out in the given set of circumstances.

20. The appeal filed by the State titled as State of Haryana Vs. Sanjay @ Sanju bearing number CRA-S-945-SBA-2004 fails and is dismissed.

21. For the reasons recorded above, it is held that the prosecution has failed to prove its case against the accused/appellant

beyond a reasonable shadow of doubt. The benefit of doubt is extended to the appellant.

22. Accordingly, the present appeal is accepted, the judgment of conviction dated 24.10.2002, and order of sentence dated 26.10.2002 passed upon the accused/appellant are set aside. He stands acquitted of the charges framed against him by giving him the benefit of doubt. He be set at liberty forthwith, if not required in any other case. The appeal stands allowed.

26.08.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter– Yes / No